

EXHIBIT A

1 Q. Do you know what defamation is?

2 A. Yes, I do.

3 Q. And tell me what your understanding is a defamation.

4 A. Well, I feel they maligned by making false
5 accusations against me and never rectifying them.

6 Q. Who maligned you?

7 A. Massport or Phyllis Daigle or whomever else was
8 involved in H.R.

9 Q. Well, I need names and I need what they said.

10 A. Well, Tonda Lumley wrote a memo that she definitely
11 found me in violation. And then like -- and then
12 you know, that I was in the office without
13 authorization. And then they later found out that
14 I signed out for a key and never, you know,
15 retracted that.

16 Q. So let me see, Tonda Lumley's defamation was her
17 written report and essentially her investigation
18 report?

19 A. Correct.

20 Q. Was Tonda Lumley the H.R. employee who investigated
21 the October 16th incident?

22 A. I believe so. I mean all correspondence seemed to
23 come from her and I didn't understand why. She was
24 only -- her title was recruiter.

1 Q. She sent you some letters to your house?

2 A. She did and I believe to my -- who the attorney that
3 was handling it at the time, Mike Kelly.

4 Q. As far as you're concerned were any of those letters
5 defamatory?

6 A. I didn't really -- I didn't really look at them. I
7 just gave them to the attorney.

8 Q. Are you claiming today that those letters were
9 defamatory?

10 A. Again, I state I didn't really look at them. I just
11 handed them to my attorney. So I don't -- I don't
12 even -- I don't know to this day really what they've
13 said. But I did see the one from -- it was a short
14 note that she said that -- well, they told me, the
15 attorneys told me that she said that I entered the
16 office without authorization and they questioned me.

17 Q. So is the substance of Tonda Lumley's defamation her
18 description of her view of the facts of the October
19 16, 2001 incident?

20 MS. BRASSIL: Objection.

21 MR. HOCH: You can answer that.

22 A. I don't know what her thoughts were. But I
23 certainly know that the statement she made to me
24 were false. That I was not in an office without

1 authorization.

2 (BY MR. HOCH)

3 Q. When did Tonda Lumley make statements to you?

4 A. I don't -- I don't know the dates. I don't recall
5 the dates.

6 Q. Well, did you speak to her in person ever?

7 A. No.

8 Q. Did you speak to her over the phone?

9 A. No.

10 Q. Did you --

11 A. The first time I saw her was at the meeting in
12 January.

13 Q. Have you ever spoken to her since that meeting?

14 A. No.

15 Q. So the only oral statement she could have made to
16 you was at that January meeting?

17 A. I don't know if she made a statement -- and what her
18 statements were in writing.

19 Q. So the only defamatory statements from Tonda Lumley
20 were in writing; is that correct?

21 MS. BRASSIL: Objection.

22 MR. HOCH: You have to answer the
23 question.

24 A. I don't recall. I just remember that.

1 (BY MR. HOCH)

2 Q. You remember what?

3 A. The writing.

4 Q. And that was her investigation report?

5 A. Yes.

6 Q. And is it your belief that that investigation report
7 is defamatory?

8 A. Yes. Because --

9 Q. And what is it in that report that is defamatory?

10 A. I was not in that office without authorization.

11 Q. So you believe her report contained a false
12 statement; is that --

13 A. Yes. Yes. Along with Phyllis Daigle saying that I
14 copied papers, which I didn't do.

15 Q. Has anyone ever reported to you that Tonda Lumley
16 has spoken about your situation to people outside of
17 Massport?

18 A. No. I wouldn't know anybody that she knows.

19 Q. Do you have any reason to believe Tonda Lumley has
20 spoken about you to people outside of Massport?

21 A. No. How would I -- I would not know that.

22 Q. Do you have any evidence that Tonda Lumley has
23 talked about you and defamed you inside of Massport,
24 talking to people inside of Massport?

1 A. No one has ever said -- I don't speak to anybody, so
2 I wouldn't know.

3 Q. Your partner was still working at Massport at the
4 time that you left Massport; is that correct?

5 A. Yes.

6 Q. Did he ever come to you and say I hear Tonda Lumley
7 is speaking about you or bad mouthing you?

8 A. No. They would never say anything to him anyway.

9 Q. Did he ever come to you and tell you that anybody
10 was talking about you?

11 A. No. I don't recall him ever mentioning.

12 Q. So then again, as you sit here today, the only thing
13 that you can point to that Tondaleya Lumley did that
14 was defamatory was the investigation report that she
15 wrote?

16 A. Right. I don't -- I don't know what was contained
17 in it. But there could have been two or three
18 items. And again, to me, they were all false
19 because I wasn't in the office without
20 authorization. I did not copy papers. I did not
21 take any papers. I don't know what the other one --
22 again, and we've discussed this on two or three
23 occasions, their complaint against me changed three
24 or four times from the key, to copying papers. And

1 when they found out I signed out for the key, they
2 dropped the key issue. Now, they're started to work
3 on copying paper issue. And when they couldn't come
4 up with -- Tonda Lumley did say to me in the
5 January, they weren't aware of what papers were
6 copied. So it changed back and forth. And I'm not
7 a legal person and I just felt that was defaming me
8 by making false accusations against me. And no one
9 ever even apologized, well, we did make a mistake,
10 you did sign out for the key. You know, and it went
11 on and on and on.

12 Q. So other than those things that you just talked
13 about involving Tonda Lumley and her work as an
14 employee of Massport and the report she wrote in
15 your post termination hearing, are you aware of any
16 other statements either written or oral that Tonda
17 made that were defamatory about you?

18 A. At this time, I don't recall. I would have to go
19 look back and see whatever documents were sent.

20 Q. Well, what would you look back at to see?

21 A. I would have to ask you know, counsel what they have
22 in their records.

23 Q. So you're talking about correspondence from
24 Massport --

1 A. Yes.

2 Q. -- to you?

3 A. Yes.

4 Q. So maybe there would be something in those
5 correspondence, correct?

6 A. Possibly. And I don't -- I don't recall at this
7 time.

8 Q. Can you think of anything else?

9 A. Not at this time.

10 Q. Were there ever any stories in the newspaper where
11 Tonda Lumley was quoted about you?

12 A. About me?

13 Q. Yes.

14 A. No. Not --

15 Q. In the press, on the news? What did Phyllis Daigle
16 do that was defamatory against you?

17 A. Accusing me of doing something I didn't do.

18 Q. Who did she make the statement to?

19 A. I assumed -- well, I shouldn't assume. It was
20 certainly made to H.R. and she was in the huddle
21 with her immediate supervisor Mary Ann Bradley and
22 I would venture to gain they were discussing the
23 situation.

24 Q. That however is a guess on your part; am I correct?

1 A. At this point, yes.

2 Q. You have no knowledge of exactly what was said in
3 that conversation?

4 A. No. I wasn't invited into it.

5 Q. Are you aware of any other statements Phyllis Daigle
6 made about you that you considered defamatory?

7 A. No. I don't know if there's any affidavits that she
8 has signed or anything else. So I don't know.

9 Q. Has anybody ever come to you from outside Massport
10 and said that Phyllis Daigle was speaking ill of
11 you?

12 A. No.

13 Q. Anybody inside Massport ever say Phyllis Daigle was
14 saying untruthful things about you?

15 A. No.

16 Q. John Clifford ever tell you that he heard Phyllis
17 Daigle was talking poorly about you?

18 A. I don't recall that at all.

19 Q. So again, the statements that Phyllis Daigle made
20 that you allege are defamatory are the statements
21 she made in the course of Massport's investigation
22 into the October 16, 2001 incident?

23 A. Yes.

24 Q. Do you have any evidence that Phyllis Daigle was

1 A. I don't know that.

2 Q. So do you have any evidence that Phyllis Daigle
3 spoke to people who had no reason to know about the
4 investigation?

5 A. I don't know that.

6 Q. Do you have any evidence that Tonda Lumley spoke to
7 people who had no reason to know about the
8 investigation?

9 A. I don't -- I don't know that.

10 Q. So as far as you're aware, both Tonda and Phyllis
11 kept their conversations about you to the small
12 circle of people who were involved in the
13 investigation?

14 A. I would venture to gain that that would be the
15 situation.

16 Q. So you agree that they kept their conversations to
17 that small group who were involved in the
18 investigation?

19 A. Massport has a -- it's almost a policy that if one
20 person knows, everybody knows. Things get around
21 here like wildfire. So I don't know if they spoke
22 to anyone else.

23 Q. Are you aware of Tonda Lumley spreading information
24 about you around Massport?

1 A. No. I never spoke to anybody at Massport. I left
2 here that day and that was it.

3 Q. Are you aware of Phyllis Daigle spreading
4 information about you at Massport?

5 A. Not aware of it.

6 Q. Is there anybody else at Massport who defamed you?

7 **MS. BRASSIL:** Objection to the form.

8 **MR. HOCH:** You may answer the question.

9 A. I haven't really thought about it. I don't know.
10 I'm only talking about people that were involved in
11 the situation.

12 **(BY MR. HOCH)**

13 Q. And so right now that's Tonda Lumley and Phyllis
14 Daigle? Is there anybody else who you believe at
15 Massport who made false statements about you?

16 A. Well, Kathleen Conlin was involved with Tondaleya
17 Lumley. She agreed with her, so you know, I --

18 Q. Are you aware that Kathleen Conlin wrote a report
19 after your post termination hearing?

20 A. At this time I don't recall. I don't know if I ever
21 saw it.

22 Q. Well then tell me what --

23 A. Is it something that I would have received?

24 Q. I'm just asking if you remember. Mr. Pione, as far

1 as you're aware --

2 MS. BRASSIL: Can we take just a second
3 break?

4 MR. HOCH: Yes, sure. Go off the record.

5 (OFF THE RECORD)

6 MR. HOCH: Back on the record.

7 (BY MR. HOCH)

8 Q. Do you have any evidence that Kathy Conlin who was
9 the director of H.R. at the time made any false
10 statements about you to anyone?

11 A. To anyone?

12 Q. To anyone.

13 A. I'm not aware of that.

14 Q. So do you have any reason to believe that Kathy
15 Conlin defamed you?

16 A. Only if she -- only if her reports were in the same
17 vain as Tonda Lumley and Phyllis Daigle's.

18 Q. So to the extent Kathy Conlin defamed you, you're
19 alleging it was part of the investigation and the
20 outcome of the investigation into your behavior on
21 October 16, 2001?

22 A. Yes.

23 MS. BRASSIL: Objection to the form.

24 (BY MR. HOCH)

1 Q. Could you repeat your answer, Mr. Pione?

2 A. Yes.

3 Q. Is there anybody else who you believe made false
4 statements about you at Massport?

5 A. Whomever was involved in that investigation as far
6 as I was concerned, they made false statements. And
7 I don't know of all the people that were involved.

8 Q. Other than statements that were made as part of the
9 investigation, are you aware of any other false
10 statements that were made by employees of Massport
11 about you?

12 A. No, not at this time.

13 Q. As far as you're aware are there any false
14 statements -- well, were any false statements made
15 about you by anyone at Massport after your post
16 termination hearing?

17 A. Not that I'm aware of.

18 Q. So as far as you're concerned any false statements
19 made about you would have stopped after the post
20 termination hearing?

21 A. I can't answer that honestly. I don't know if they
22 stopped or continued or you know. I don't know.

23 Q. Have you made any effort to find out whether people
24 were making false statements about you at Massport?

1 A. No.

2 Q. So in terms of what you know defamatory statements
3 that you allege have been made by Massport involved
4 Tonda Lumley, Phyllis Daigle and Kathy Conlin?

5 A. And who else may have been involved in the
6 investigation and utilizing the same information.

7 Q. So you agree it was those three people plus anyone
8 else involved in the investigation?

9 A. Yes.

10 Q. And the tenure of those statements involved the
11 descriptions of what you did on October 16, 2001
12 that right or wrong the statements involve your
13 behavior on October 16, 2001?

14 A. The statements involved, yes. They involve my --
15 they made the statements of my behavior on that
16 date, yes.

17 Q. And those are the statements you believe are
18 defamatory?

19 A. Yes.

20 Q. And Mr. Pione, I'm -- you know in my mind
21 contrasting those where somebody is saying you're a
22 terrible human being or you're a murderer or you're
23 you know a thief -

24 MS. BRASSIL: Objection to the form of

1 this question.

2 **(BY MR. HOCH)**

3 Q. So what I'm asking you is, whether you're alleging
4 there were any sort of statements made like that
5 about your character or about your criminal record
6 or about your history in life?

7 A. No.

8 Q. Were there any statements like that that you're
9 alleging were defamatory?

10 **MS. BRASSIL:** Let me speak. I'm just
11 going to reserve my right to motion to strike
12 on this particular question.

13 A. Do I have to answer?

14 **(BY MR. HOCH)**

15 Q. You have to answer.

16 **MS. BRASSIL:** I think you might have to
17 read it back.

18 **MR. HOCH:** That's up to him to tell me,
19 not you to coach him.

20 **MS. BRASSIL:** I'm not coaching him.

21 A. I -- would you rephrase the question because I've
22 lost you on it now.

23 **(BY MR. HOCH)**

24 Q. Well, Mr. Pione, you've lost me. I'm trying to find

1 out whether the sum and substance of the defamatory
2 statements that you allege involve your behavior on
3 October 16th, and I'm just trying to make sure
4 because you seem fairly vague about all of this,
5 that there are no other statements out there --

6 MS. BRASSIL: Objection to the form of the
7 question. Objection to the comment by counsel.

8 (BY MR. HOCH)

9 Q. I'm just trying to make sure Mr. Pione, that there
10 are no other statements out there that would be
11 considered defamatory that you are going to allege
12 in this case.

13 A. I don't know what statements are out there. All I
14 know is if someone said that I was in an office
15 without authorization, that's a lie. And if someone
16 said I copied papers, which I didn't, that's a lie.
17 And if someone said I took papers off someone's
18 desk, that's a lie. That to me is defamation. And
19 that's in laymen's terms. I can't answer you any
20 other way and I don't know what these people are
21 thinking or saying.

22 Q. And beyond the three people we've talked about,
23 you're not aware of anybody else making those
24 statements about your behavior on October 16th?

1 A. Again, I don't know legalese. I just know that it
2 wasn't the right thing to say when she did know it.

3 Q. And Mr. Pione, I'm not asking you legalese. I'm
4 asking you to tell me people who made false
5 statements about you, or people who made derogatory
6 statements about you that you are alleging give rise
7 to damages that you seek compensation for in this
8 case. And you should know that and so that's what
9 I'm trying to exhaust your memory on. If your
10 memory is exhausted, you can tell me that. But I
11 need to know every single person and every single
12 statement they made.

13 A. This is all I remember. And the last one was Anita
14 Jansky and in her affidavit she did say she didn't
15 know about the key and she did know about it. If
16 she forgot, she may have forgotten.

17 Q. And you believe that statement may reflect poorly
18 upon you?

19 A. Yes, I do. It made me look like a liar.

20 Q. And has anybody outside of Massport ever mentioned
21 this incident to you?

22 A. Who outside of Massport? I wouldn't know anybody
23 outside of Massport would know what was involved.
24 I don't --

1 Q. So I'll take that -- is that a no?

2 A. Yes, that's a no.

3 Q. Has anyone ever refused to hire you for a job
4 because of the way in which your employment with
5 Massport terminated?

6 A. No.

7 Q. Has anyone ever said to you, let's say in a job
8 interview you know, I heard you left Massport
9 under --

10 A. No.

11 Q. Has anyone ever refused to associate with you
12 because of these defamatory statements you allege?

13 A. No.

14 Q. Other than losing your job, do you believe any of
15 those statements caused you any economic harm?

16 A. Yes.

17 Q. How is that?

18 A. By losing my job.

19 Q. Other than that. So inability to get other jobs?

20 A. Absolutely. It's ruined my life.

21 Q. Is that because other people won't hire you or is
22 that because you are unable to go out and look for
23 work?

24 A. I'm unable to -- I am going -- I see constantly

1 physician and a psychotherapist.

2 Q. But so, no employer or contractor has ever refused
3 to work with you because of --

4 A. No.

5 Q. -- how you left Massport?

6 A. No.

7 Q. Mr. Pione, let's talk a little bit about October 16,
8 2001. Can you give me a brief overview of what
9 happened that day starting from when you first went
10 to work?

11 A. When the incident occurred?

12 Q. I believe that was October 16, 2001.

13 A. I don't even remember the date anymore. Yeah. I
14 see it here, yes, it is. I was coming out of the
15 office after I had printed something on the printer
16 that was in that -- in Anita Jansky's office and
17 Phyllis Daigle was out there and she said to me
18 What's going on here? And I thought she was
19 kibitzing with me. I had seen her earlier and she
20 said good morning and walked by. I said, What are
21 you talking about what's going on -- two or three
22 times. She says, I said, what's going on here? And
23 I says, I don't know what you're talking about. Why
24 are you coming out that office? I was like I'm

1 Q. So you went home on October 16, 2001 and you never
2 returned to work at Massport, correct?

3 A. No. I called the EAP, they weren't able to see me
4 till the next day, I believe on the 18th. And when
5 I was interviewed by the EAP's psychotherapist, who
6 Massport pays for, he said to me, I don't want you
7 anywhere near that -- those offices. You're not to
8 go back there. And I want the name of your primary
9 care physician. I'm going to contact him
10 immediately.

11 Q. Did you make any phone calls to anybody at Massport
12 after you left on the 16th?

13 A. I tried to contact Mary Ellen Murphy and it took me
14 some time and I finally got her and she said to me
15 that H.R. told her that -- not to -- she was not to
16 speak to me.

17 Q. How many times did you have to call her before you
18 reached her?

19 A. I don't know. I don't recall. Several -- several
20 times.

21 Q. So was it a couple of days later do you think?

22 A. No. I don't know if it was the same day or the day
23 after.

24 Q. So either the 16th or the 17th it's your memory you

1 spoke to Mary Ellen Murphy?

2 A. Just briefly and she told me she wouldn't speak to
3 me.

4 Q. Did you leave a message for anybody else or did you
5 speak to anybody else at Massport?

6 A. No.

7 Q. Do you recall leaving a message for Mary Ann
8 Bradley?

9 A. Oh, I may have left a message for Mary Ann Bradley
10 when I couldn't get Mary Ellen. But, I don't think
11 she ever called me back.

12 Q. Now, Mr. Pione, if you flip through the packet a
13 couple of pages you're going to see a handwritten
14 piece of paper.

15 A. Mm-hmm.

16 Q. Do you have a document in front of you that down at
17 the bottom there's a stamp that says the number 26?

18 A. Yes.

19 Q. Now, I admit some of the writing at the top of this
20 is hard to read, but do you see your name at the
21 top?

22 A. I do see that and I can't read anything else, just
23 a date 10/17.

24 Q. Yes. And can you see Mary Ann Bradley's name up at

1 the top there or Mary Ann --

2 A. Oh, I see Mary, yeah.

3 Q. And is it possible that up at the top it says
4 "message Larry Pione left for Mary Ann"?

5 A. It could say that.

6 Q. And then what's written below -- well, it says on
7 10/17/01; is that correct?

8 A. Correct.

9 Q. And then what's written, (reading) "I am at home
10 because I'm really sick to my stomach. You know
11 what the incident was about. I don't feel that I
12 should have been ostracized the way that I was by
13 Phyllis D. for walking out of an office where my" --
14 the word is cut off -- "is located and I'm just
15 doing my job. I don't want anyone to think that I'm
16 a derelict from doing my duties. I" -- something --
17 to you further about this. Call me at home." And
18 then there's a telephone number. Do you recognize
19 that telephone number?

20 A. That looks -- yeah, that's my home phone. I think
21 that says I wish --

22 Q. I wish to --

23 A. -- to speak to you further about this.

24 Q. Does this -- do you believe this is a message that

1 you left for Mary Ann Bradley?

2 A. I imagine I did. I said I didn't recall a time. I
3 thought I left a message for Mary Ann Bradley too.
4 Because I don't think I was getting -- that's why I
5 don't know when I spoke to Mary Ellen Murphy. Maybe
6 after I spoke to Mary Ellen Murphy I tried to
7 contact Mary Ann Bradley.

8 MR. HOCH: Can we mark this as the next
9 Exhibit?

10 (Handwritten note dated 10/17/01 was
11 marked as Exhibit No. 4)

12 (BY MR. HOCH)

13 Q. So at least on the 17th of October you were able to
14 make some phone calls to Massport --

15 A. I made one --

16 Q. -- to try and discuss the incident on the 16th?

17 A. Yeah. I wanted to know what was going on.

18 Q. Now, Mr. Pione, I want you to sort of take me in
19 some detail through the 16th when you got home and
20 then through the next week if you can in terms of
21 how you were feeling.

22 A. It was a blur.

23. Q. And tell me why it was a blur?

24 A. Well, because it was just overwhelming. No one was

1 A. It stayed about the same. It was just a very bad
2 low time.

3 Q. At some point did it get better or worse?

4 A. Maybe after a couple of months you might have had a
5 little -- a day of, you know, you didn't think about
6 it. I never -- I didn't even want to see an
7 envelope come from Massport with the logo on it, it
8 upset me. I didn't want to see anything on
9 television or the papers.

10 Q. After that first week, at any point did your mental
11 health take a turn for the worse?

12 A. I don't -- I don't understand your question.

13 Q. Well, when did you first -- when did you start
14 getting out of bed on a regular basis? How long did
15 that take?

16 A. I don't recall that.

17 Q. Was it a week? Was it two weeks? Was it a month?

18 A. I don't recall. Most of the time I just -- I laid
19 low.

20 Q. When did you go to Florida?

21 A. I believe in December.

22 Q. Was that the first time you were out bed to drive to
23 Florida?

24 A. More or less. More or less. I was -- I was --

1 medications were kind of helping me out a little bit
2 and Dr. Freeman and -- thought that I should leave.
3 And again, he spoke to the -- my primary care
4 physician and he said it would be a good idea to get
5 away.

6 Q. You were terminated on November 30th, correct?

7 A. Correct.

8 Q. You were in Florida at the time?

9 A. Yes, I was.

10 Q. So you went to Florida prior to November 30th?

11 A. I don't know any of the exact dates -- it could be
12 -- it could have been a couple of days. It could
13 have been a week. I don't know the exact dates.

14 Q. How did you get to Florida?

15 A. You've asked me that before and I don't recall. I
16 don't remember if we drove, if we flew or we took
17 the auto-train.

18 Q. Who is we?

19 A. John and I.

20 Q. So you and John went --

21 A. John Clifford.

22 Q. -- together?

23 A. Yeah.

24 Q. Would you have done any of the driving?

1 A. Yes.

2 Q. Were those demands made through letters?

3 A. I believe so.

4 Q. Did anybody ever call you at home and demand that
5 you --

6 A. I don't recall anyone --

7 Q. -- participate?

8 A. I don't recall anyone calling me.

9 Q. Some of those letters went to you directly and some
10 went to your lawyer; is that correct?

11 A. I believe so. I'm not clear on -- you know, it's
12 been a while.

13 Q. Mr. Pione, what medical provider told you that you
14 should not participate in the investigation?

15 A. Both Bruce Freeman and my primary care physician.

16 Q. Now, previously you said to me they told you not to
17 return to Massport.

18 A. Right.

19 Q. But did they separately tell you don't participate
20 in the investigation?

21 A. That I don't recall. I just -- I don't recall that.

22 Q. So when you say for health reasons you were unable
23 to participate in the workplace investigation, can
24 you tell me what you mean by that?

1 A. My -- the attorney at the time wrote that and I
2 don't know if he conferred with both the physician
3 and the psychotherapist.

4 Q. Well, did you believe in October -- second half of
5 October and November of 2001 that you were unable to
6 participate in the investigation for health reasons?

7 A. Really, I had -- I didn't want -- I didn't want to
8 even hear the word Massport.

9 Q. Just so I'm clear, this all started when Phyllis
10 Daigle said what are you doing there?

11 A. When she accused me of whatever.

12 Q. Mr. Pione, please skip to page five of your
13 complaint, Exhibit Three. You'll see at the top
14 count five: "Intentional infliction under emotional
15 distress", do you see that?

16 A. Yes.

17 Q. Can you read page -- paragraph 46 out loud please?

18 A. "The defendant by and through its employees
19 intentionally or recklessly accused the plaintiff of
20 violating policy and subsequently fired the
21 plaintiff after months of harassment and thereby
22 caused the plaintiff to suffer severe emotional
23 distress."

24 Q. Now, the intentionally or recklessly accusing you of

1 anything else that Massport did that's caused you
2 severe emotional distress after you went home on the
3 16th?

4 A. That meeting in January, it was just like -- it was
5 almost like a kangaroo court. They just sat there
6 like motionless everyone and they didn't -- I don't
7 know, there was no kind of interaction or any kind
8 of responses. I just felt, you know, they were just
9 doing what they thought they had to do and pacifying
10 me. They've already made their determinations and
11 they're going to go on with it.

12 Q. Now, when you say they sort of sat there passively;
13 is that what you said?

14 A. Yes.

15 Q. Isn't it accurate to say that you and your lawyer
16 refused to allow Massport to ask you any questions?

17 A. We did.

18 Q. So is it fair to say that the entire hearing was an
19 opportunity for you to ask questions and make a
20 statement, correct?

21 A. It was, correct.

22 Q. And there was no opportunity for Massport to ask you
23 questions?

24 A. Correct.

1 Q. Do you recall that Massport made an initial
2 statement of the facts of the investigation?

3 A. I don't recall that. I know you've asked that
4 before. I don't recall what went on that day
5 really. And I -- I mean I remember reading from a
6 piece of paper. I don't know what Massport said to
7 me.

8 Q. But you agree that you and your lawyer did not give
9 Massport the opportunity to ask you any questions or
10 clarify anything with you?

11 A. It wasn't my decision. It was my counsel's decision
12 for them not to ask me any questions.

13 Q. And you went along with your counsel's decision?

14 A. Well, I -- I assume counsel knows what they were
15 doing and I had to agree with it.

16 Q. Backing up a little bit. You said the Port officer
17 coming to your house and the letters from Tonda
18 Lumley caused you some emotional distress. Was
19 there anything else between the Port officer coming
20 to your house and getting the termination letter
21 that caused you any distress that Massport did?

22 A. In what time frame?

23 Q. From the time frame of --

24 A. October 16 --

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1 A. Yes.

2 Q. -- seen him between October 16th and November 13th?

3 A. Yes. Yes.

4 Q. And you see on the first page he says your condition
5 may persist indefinitely?

6 A. Yes.

7 Q. Do you think your condition has ever improved?

8 A. With the anxiety and depression?

9 Q. Yes.

10 A. Not really.

11 Q. Could you return to work at Massport?

12 A. I doubt it.

13 Q. At any point since you left Massport, could you have
14 returned to work at Massport?

15 A. I doubt it very much.

16 Q. Why not?

17 A. Just the thoughts of it gives me the shakes.

18 Q. You have since filed for long term disability and
19 have been granted it, correct?

20 A. Long term disability?

21 Q. LTD benefits?

22 A. Yes.

23 Q. So you received two years of LTD benefits?

24 A. I did.

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1 Q. Are you currently getting any benefits from any
2 health plan or insurance plan or government plan for
3 your disability?

4 A. No. I receive my social security check monthly.

5 Q. Is that a social security disability check?

6 A. It was originally. I'm regular social security I
7 believe. I receive it on the 3rd of the month.

8 Q. If in December of -- well, is there anything
9 Massport could have done that would have allowed you
10 to return to work?

11 A. I don't understand that question.

12 Q. Is there anything Massport could have done after
13 October 16, 2001 when you left work that would have
14 allowed you to return to work?

15 A. Probably if they sat and talked to me and cleared my
16 name and said, you know, we realize you didn't go in
17 that office without authorization. We realize you
18 didn't take any paperwork or copy any papers. I
19 don't -- but I don't know again -- yeah. I would
20 imagine.

21 Q. So if Massport clears your name that might have
22 resolved your stress and anxiety enough that you
23 could come back to work?

24 A. I don't know. I couldn't tell you that. It would

1 have been -- it would have been a nice scenario.

2 But I couldn't tell you that exactly if that would
3 have been --

4 Q. So you don't know for sure whether you could have
5 returned to Massport had your name been cleared?

6 A. At that point.

7 Q. Could you return today?

8 A. I doubt it very much.

9 Q. Why is that?

10 A. I just -- I told you I don't even like being in this
11 building.

12 Q. So even if your name was cleared, you don't think
13 you could return?

14 A. I doubt it very much.

15 Q. What if Massport instead in clearing your name said,
16 hey, look we think you did it, but we'll give you a
17 week suspension, so it's going to go in your record
18 as discipline for inappropriate behavior, but you
19 can come back to work. We're going to rescind the
20 termination.

21 MS. BRASSIL: Objection.

22 (BY MR. HOCH)

23 Q. Do you think you could have returned to work?

24 A. I --

1 MS. BRASSIL: Objection.

2 MR. HOCH: You can answer.

3 THE WITNESS: Excuse me?

4 MR. HOCH: You can answer.

5 A. I doubt it.

6 (BY MR. HOCH)

7 Q. You doubt it? And that was true in December of 2001
8 and it's true today?

9 A. I believe --

10 MS. BRASSIL: Objection.

11 (BY MR. HOCH)

12 Q. So you're saying there's nothing Massport could do
13 or could have done after you left work on the 16th
14 that would have helped you return to work in your
15 view?

16 MS. BRASSIL: Objection.

17 THE WITNESS: Do I have to answer that?

18 MR. HOCH: Yes.

19 A. I don't know what my mental state would be and I --
20 and I was advised by your EAP representative not to
21 come back here also because of the interview and
22 they saw how I was.

23 (BY MR. HOCH)

24 Q. Have your doctors told you you shouldn't return to

1 any work whatsoever?

2 A. My psychotherapist tells me that I have very little
3 if any -- I can't even think of the word. I forget
4 words -- concentration with post traumatic stress.

5 Q. So you requested family medical leave from Massport,
6 correct?

7 A. I did.

8 Q. And Massport granted that, correct?

9 A. Yes, they did as far as -- I understood they did.

10 Q. Are you aware of whether other employees at Massport
11 had taken leave under the FMLA?

12 A. No. I have nothing to do with that.

13 Q. Had you ever heard anybody at Massport badmouth or
14 complain about people taking leave under the FMLA?

15 A. No. I've never -- no one would -- no one ever
16 discussed anything like that with me.

17 Q. Are you aware of any bias at Massport against people
18 who take FMLA?

19 A. I'm not familiar with anyone that's taken FMLA.

20 Q. Mr. Pione taken -- I'm sorry, Mr. Pione, Mr.
21 Clifford has taken FMLA?

22 A. Yes, he has.

23 Q. Had he taken it prior to your going on leave on the
24 16th of 2001?

1 A. I don't recall when he took it. He ended up in a
2 hospital for a while.

3 Q. Did anybody ever talk to you about the fact that you
4 were on FMLA?

5 A. Like --

6 Q. Anybody from Massport?

7 A. I don't recall that.

8 Q. Did anybody ever call you up to check on whether you
9 could return to work?

10 A. No. I don't recall anybody speaking to me.

11 Q. Do you have any evidence that Massport ignores the
12 Family Medical Leave Act in the way it treats its
13 employees?

14 A. Well, obviously I was terminated while I was under
15 the Family and Medical Leave Act, so I would say
16 that in my case they certainly ignored it.

17 Q. And other than you, are you aware of Massport
18 flouting or ignoring the requirements of the FMLA?

19 A. I've mentioned before, I'm not -- I'm not privy to
20 anyone being on FMLA or having any situations with
21 FMLA.

22 Q. So why is it -- do you think you were fired for
23 taking FMLA?

24 A. I mean the modus operandi at Massport, it could be

1 any reason. I don't know if that was part of the
2 reason.

3 Q. So is it fair to say you have no evidence or no
4 information to suggest you were fired because you
5 requested or were granted family medical leave?

6 A. I don't have any information. If there's
7 information around, I'm not aware of it.

8 Q. So your claim is not that Massport took action
9 against you for taking FMLA, but that your
10 termination was in violation of the FMLA?

11 **MS. BRASSIL:** Objection.

12 A. I don't know what you mean by that question that my
13 claim is -- I don't know what that means.

14 **(BY MR. HOCH)**

15 Q. It sounds like you're saying you don't believe or
16 you don't have any evidence that Massport fired you
17 because you took FMLA; is that correct?

18 **MS. BRASSIL:** Objection.

19 A. I'm not aware of it. I've said that to you -- this
20 is the second or third time.

21 **(BY MR. HOCH)**

22 Q. But you have no --

23 A. I'm not aware of it.

24 Q. But you feel the fact while you were on FMLA

1 Massport should not have fired you?

2 A. I would -- I would believe that to be the situation.

3 Yes.

4 Q. And that's essentially what you're arguing in this
5 case with your FMLA claim that Massport should not
6 have fired you while you were on leave?

7 MS. BRASSIL: Objection.

8 A. Absolutely.

9 (BY MR. HOCH)

10 Q. Mr. Pione, you've alleged in this case that you have
11 a contract with Massport; is that correct?

12 MS. BRASSIL: Objection.

13 A. If that's what's in the complaint, that's what's in
14 the complaint. My attorneys have written it.

15 (BY MR. HOCH)

16 Q. Mr. Pione, if you look on page three at the bottom,
17 do you see count three breach of contract?

18 A. Mm-hmm.

19 Q. How did Massport breach it's contract with you?

20 A. I'm not versed in legalese and I can't answer that
21 honestly to you, so --

22 Q. Well, what's the contract as you understand it?

23 A. I don't understand it.

24 Q. So you have no idea whether you have a contract at

1 Massport or not?

2 A. I'm not aware -- again, I'm not versed in legalese.

3 Q. Mr. Pione, have you ever had renovations done to
4 your house?

5 A. Yes.

6 Q. Did you enter --

7 A. I know what a contract is.

8 Q. Did you enter into contracts?

9 A. Yes. I know what a contract is.

10 Q. Your profession has been dealing with financial
11 matters in life?

12 A. Yes. Yes.

13 Q. You're familiar with contracts?

14 A. Yes.

15 Q. Usually people sign them?

16 A. Yes.

17 Q. Usually there are terms to a contract?

18 A. Yes.

19 Q. Are you aware of whether you have any contracts with
20 Massport and what the terms of that contract are?

21 A. I'm not. And I don't know what constitutes a
22 contract legally.

23 Q. Mr. Pione, do you -- are you familiar with
24 Massport's policy on employment terms and

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1 Q. Why do you think you were entitled to a hearing on
2 the merits before you could be terminated?

3 A. As far as I knew they were in the policies and
4 procedures that you were entitled to a hearing after
5 a termination. But I was terminated, I felt,
6 falsely because I didn't do the things that they
7 said I did.

8 Q. Mr. Pione, did you think you had a right to a
9 hearing before or after your termination?

10 A. Why would I have a hearing before my termination?

11 Q. Mr. Pione, I'm just asking you a question. So is it
12 your --

13 A. No. I'm sorry.

14 Q. So your belief is you were entitled to a post
15 termination hearing?

16 A. Right. If I was terminated wrongfully, I would want
17 it explained why I was terminated.

18 Q. So if you look at line 34 in your complaint that's
19 different from what you believe to say, "Mr. Pione
20 could only be terminated after a hearing". Your
21 feeling was you could be terminated and then have
22 the hearing afterwards?

23 A. Again, I'm not versed in legalese and this paragraph
24 really did not sink into me what it meant -- what it

1 means.

2 Q. Why did you think you were entitled to a full and
3 fair investigation?

4 A. To me that's a normal thing to happen between human
5 beings.

6 Q. Do you think Massport promised you that anywhere in
7 its policies?

8 A. Massport professes to be a diverse, fair
9 organization and they're anything but.

10 Q. Mr. Pione, does Massport's policy ever work at --
11 anywhere promise you a full and fair investigation?

12 A. They constantly state that.

13 Q. Where?

14 A. That they're a diverse and fair organization with
15 equal opportunity, etcetera, etcetera.

16 Q. So does it ever say anywhere that you're entitled to
17 a full and fair investigation before you can be
18 terminated?

19 A. I don't know. I'm not -- again, I'm not versed in
20 legalese. So I don't know how -- what the verbiage
21 is.

22 Q. So you don't know whether Massport ever promised you
23 that?

24 A. Again, I'm not -- I'm not versed in legalese.

1 Q. Mr. Pione, do you understand the phrase "full and
2 fair investigation"?

3 A. Yes.

4 Q. Okay. So that's not legalese is it?

5 A. Well, it is and it isn't.

6 Q. Well, let's use it in a way that's not. Let's use
7 it in a way that you understand it.

8 A. Fine.

9 Q. Does anywhere in Massport or has Massport ever
10 promised you a full and fair investigation prior to
11 your termination?

12 A. I don't feel that I got a full and fair
13 investigation.

14 Q. Mr. Pione, did Massport ever promise you that you
15 were entitled to one?

16 A. I guess they have.

17 Q. Where?

18 A. In maybe the handbook.

19 Q. Okay. But you have no idea?

20 A. No, I'm not -- I'm not certain about it.

21 Q. You can't point to anything?

22 A. Not at this point.

23 Q. Do you recall ever reviewing something that said
24 that?

1 Q. So you don't recall ever relying on the language of
2 the policies prior to accepting employment?

3 MS. BRASSIL: Objection.

4 A. I don't recall.

5 (BY MR. HOCH)

6 Q. Mr. Pione, what would a fair investigation in this
7 instance mean to you? What did Massport do that was
8 unfair and what should Massport do to make it -- or
9 should have done to make it fair?

10 A. I don't know. I just know how things operate at
11 Massport and I know when they do things they really
12 don't do always the things above board. That's my
13 opinion.

14 Q. But what can you tell me that Massport --

15 A. And I don't --

16 Q. -- did that was unfair in it's investigation?

17 A. Just making accusatory remarks against me and then
18 terminating me.

19 Q. Mr. Pione, doesn't any investigation into behavior
20 involve some accusatory comments? Doesn't that kick
21 off --

22 A. Being accused -- they didn't prove that I did those
23 things.

24 Q. No. But let's talk about the investigation. What

1 was unfair about the investigation?

2 A. The investigation was unfair because they never
3 proved what they -- what they alleged that I had
4 done.

5 Q. And what could they have done to have a more fair --

6 A. Rectify it.

7 Q. How?

8 A. Come back and say we made a mistake.

9 Q. Mr. Pione, did you ever tell Massport they made a
10 mistake?

11 A. That's not -- that's not -- wasn't my position to
12 tell them.

13 Q. Mr. Pione, did you ever tell Massport that they had
14 made a mistake?

15 A. I made statements to them.

16 Q. When?

17 A. At the January meeting.

18 Q. Did you ever make any statements prior to your
19 termination?

20 A. I don't recall that. Why would I --

21 Q. Did you make any --

22 A. -- excuse me. I wouldn't make any statements prior
23 to my termination.

24 Q. Did you make any statements through your lawyer?

1 A. I believe they were made through the attorney. I
2 don't recall.

3 Q. Did you ever have -- did your lawyer ever write up
4 your position and submit it to Massport?

5 A. I don't recall. They may -- they may --

6 Q. Do you recall ever signing an affidavit or a
7 statement prior to termination?

8 A. Prior to the November 30th date?

9 Q. Yes.

10 A. I don't recall.

11 Q. So is it fair to say you gave Massport no
12 information to assist in it's investigation?

13 A. I don't believe that I -- no. I made statements
14 that I said that I didn't do those things. So I
15 don't say that I didn't give them any information.

16 Q. Prior to your termination, did you give Massport's
17 investigators any information to present your
18 position in the investigation?

19 A. I don't recall when that information was given to
20 them.

21 Q. You never spoke to Tonda Lumley until the post
22 termination hearing; is that correct?

23 A. I believe so.

24 Q. So you never spoke to Tonda Lumley during the course

1 of your investigation?

2 A. I don't recall that. I don't recall speaking to
3 her.

4 Q. And how could they -- well, how was the hearing that
5 you received post termination unfair?

6 A. They did nothing to rectify it. I mean if I --

7 Q. And how was the hearing --

8 A. -- made the statement that I did not do those
9 things, and they just didn't want to hear it. They
10 already determined that they wanted me out of here
11 and they did it and that was it.

12 Q. So they didn't accept your version of events?

13 A. Correct.

14 Q. And that's why the hearing was unfair?

15 A. I feel that's --

16 Q. Is there anything else about the hearing that made
17 it unfair to you?

18 A. I just felt there was so many, they were like
19 ganging up on me. You know, there was four or five
20 women sitting there staring at me. I didn't think
21 that was a fair -- fair venue.

22 Q. Did it matter that they were women, Mr. Pione?

23 A. No. It just happened to be all those people, excuse
24 me.

1 Q. Did you have a problem with the fact that they were
2 women there?

3 A. No. I have no problem with women. I guess I have
4 to be politically correct and say persons.

5 Q. So other than the outcome, can you give me anything
6 or tell me anything Massport could have done
7 differently with the hearing that would have made it
8 more fair?

9 A. I don't know. I've never been involved in a
10 situation like this. So I don't really -- I can't
11 give you a honest answer.

12 Q. And Massport wanted to question you and you and your
13 lawyer refused, correct?

14 A. My lawyer and the EAP psychologist and the
15 physician.

16 Q. Was the EAP psychologist and the physician there at
17 the hearing?

18 A. No.

19 Q. Had the EAP psychologist told you, don't answer
20 questions at your post termination --

21 A. He just told me to stay away from it -- this whole
22 situation.

23 Q. But you went to the hearing?

24 A. Well, eventually, yeah, I had to.

1 Q. Do you know what your level was at Massport ?

2 A. I believe I was a level six.

3 Q. Can you jump back to the very first page or put your
4 finger on page 172 because we're going to come back
5 to it?

6 A. The same document?

7 Q. Yes. The very first page down towards the bottom it
8 says "definitions A, B, C"?

9 A. Yes.

10 Q. "ESPM or executive senior professional or senior
11 management employee means any employee in a non-
12 union position classified at level six or above".
13 Would you understand that to mean that you were an
14 ESPM employee?

15 A. Yes. It says level six.

16 Q. Mr. Pione, going back to the page that's bates-
17 stamped 172, this is the discussion in Massport's
18 policy on terms and conditions that relates to
19 disciplinary terminations and it discusses
20 procedures for that. This might be a good time to
21 take a lunch break, Mr. Pione, and have you sort of
22 look at this because what I'd like to ask you is
23 whether in this policy and anywhere outlined that
24 you're entitled to a full and fair hearing or a full

1 A. There's some -- some money.

2 Q. Mr. Pione, have you ever taken any steps to try and
3 return to the workforce?

4 A. No, I haven't.

5 Q. And why is that?

6 A. I just don't feel capable. I have not been able to
7 concentrate long enough to do any of the work that
8 I used to do.

9 Q. Do you ever anticipate returning to the workforce?

10 A. Excuse me?

11 Q. Do you ever anticipate returning to the workforce?

12 A. I don't know. At this point I don't think so.

13 Q. Is it a goal that you would like to attain?

14 A. To return to the workforce?

15 Q.s Sure.

16 A. If my physical and mental capacity would improve.
17 They don't seem to be.

18 Q. Since the day you left Massport, has one of your
19 goals been to return to some sort of employment?

20 A. I hadn't thought of it for a long time. I just
21 didn't know what I was capable of doing, if
22 anything.

23 Q. Did you think about it some at first?

24 A. No. That was -- I didn't think anything about it.

1 A. -- they would have thought me to be dishonest?

2 Q. Correct.

3 A. I would guess so. I don't know. I don't know why
4 they wouldn't believe me, but -- I really didn't
5 have that much opportunity to plead the case with
6 Leslie Kirwan or Mary Ann Bradley or Kathleen
7 Conlin.

8 Q. You were given a post termination hearing, right?

9 A. Yes. But I --

10 Q. At that point --

11 A. But here I thought --

12 Q. At that --

13 A. -- it says that I could meet with my department
14 head.

15 Q. Well, we're not there yet, Mr. Pione. But you were
16 given a post termination hearing, correct?

17 A. In January.

18 Q. Yes. Mary Ann Bradley was there?

19 A. Yes. She had nothing to say.

20 Q. At various times you felt she might be your
21 department head, it wasn't clear?

22 A. It wasn't -- well, I thought Leslie Kirwan was the
23 department head, but she was her designee.

24 Q. And the director of H.R. was at that hearing,

1 correct?

2 A. Yes, she was.

3 Q. And you were given multiple opportunities to explain
4 yourself during the course of the investigation; is
5 that correct?

6 A. In what manner?

7 Q. Well, Massport asked -- Massport reached out to you
8 and asked for your input?

9 A. But I wasn't able to speak to my supervisors.

10 Q. But you agree Massport reached out to you to get
11 your input?

12 A. They asked for my input. I wasn't able to speak to
13 them.

14 Q. Now, Mr. Pione, if you look at paragraph three it
15 says, "In the case of a demotion, involuntary
16 transfer, reduction in pay or involuntary
17 termination ESPM employee typically will receive
18 reasonable notice that one, provides an explanation
19 of why discipline is being contemplated". You were
20 given a termination notice; is that correct?

21 A. Yes.

22 Q. And it outlined why you were being terminated?

23 A. It said because of -- I don't recall it now, but I
24 believe it was because of going into that office.

1 I don't remember what the termination --

2 Q. But you did get the letter?

3 A. Well, I didn't get it, my attorney got it and I
4 don't remember what was said in it.

5 Q. It was sent to your attorney at your request?

6 A. I think he was -- it may have been his request. He
7 was -- he was dealing with H.R.

8 Q. Do you agree that you knew and you were told the
9 possible disciplinary action for you which could be
10 termination?

11 A. I don't know what's contained in that letter, so I
12 can't answer to it specifically.

13 Q. Paragraph three, number three says the notice will
14 "provide a reasonable amount of time for the ESPM
15 employee to prepare to respond". Do you agree that
16 we scheduled the post termination hearing at your
17 convenience?

18 A. I don't know if it was at my convenience or my
19 attorney's or whomever it was.

20 Q. Well Massport agreed to an extension and the
21 deadline which your lawyer requested?

22 A. I honestly don't remember that. I didn't know there
23 was a deadline.

24 Q. Were you aware that the hearing was scheduled in the

1 end of December and then your lawyer asked to have
2 it postponed because the holidays are a difficult
3 time for you?

4 A. It could have been and I don't remember at that
5 time.

6 Q. That paragraph continues, "The ESPM employee
7 generally will thereafter have an opportunity to
8 meet with his or her department head or the
9 department head's designee". And we agreed you got
10 to meet with Leslie Kirwan's designee, correct?

11 A. No. I never got to meet with Leslie Kirwan's
12 designee.

13 Q. At your post termination hearing you got to meet
14 with Leslie --

15 A. I don't consider that a meeting. I thought it was
16 a one on one thing.

17 Q. At your post termination hearing you were -- you met
18 with Massport representatives that included Leslie
19 Kirwan's designee, Mary Ann Bradley?

20 A. She was there at that meeting.

21 Q. And the director of Human Resources was there?

22 A. Yes, she was.

23 Q. But again, I don't feel that that meeting was fair
24 due to them coming and taking -- sending the

1 A. I don't recall.

2 Q. Would you agree for a couple of days Massport had no
3 idea what your employment status was because you had
4 left without telling anybody?

5 A. I don't -- that's not true. I tried to tell. I
6 tried to tell Mary Ann Bradley and I tried to -- and
7 I told -- I don't know if I told Ann Fortier I was
8 leaving that day or if I told our pool secretary to
9 relay it to Mary Ann Bradley. Because Mary Ann
10 Bradley was in that huddle with Daigle and Titus, so
11 I couldn't even speak to her. I wanted to speak to
12 her then.

13 Q. But you didn't wait around to speak to her when she
14 was available?

15 A. I was vomiting and I had diarrhea and I certainly
16 couldn't stay on the premises.

17 Q. If you look at paragraph three on what's bates-
18 stamped page 173.

19 A. Yes.

20 Q. It starts in the case of a demotion. Do you see the
21 last sentence in that paragraph, it says, "Under
22 appropriate circumstances, immediate suspension
23 without pay, demotion or termination may be
24 required; provided the notice and opportunity to be

1 heard and discussed above generally will be provided
2 subsequently in due course"? Did I read that
3 correctly?

4 A. Have you read it --

5 Q. Yes.

6 A. You have read it correctly.

7 Q. You were given leave with pay, correct?

8 A. Yes. They paid me through November 30th.

9 Q. But even prior to your putting in for FMLA, you were
10 placed on a paid leave of absence.

11 A. 30 day leave of absence.

12 Q. Do you recall that?

13 A. Yes, I -- again, I don't know if that went to my
14 attorney or it came to me.

15 Q. So you recognize that Massport could have terminated
16 you or could have suspended you without pay, but
17 chose to suspend you with pay, correct?

18 A. I don't -- I don't know that, but --

19 Q. You agree they did suspend you with pay?

20 A. They did suspend me with pay.

21 Q. And you see here in paragraph three where it says
22 you could be suspended without pay?

23 A. Yes.

24 Q. And do you agree that prior to your post termination

EXHIBIT B

FORM 117



The Commonwealth of Massachusetts

Department of Industrial Accidents – Department 117

600 Washington Street – 7th Floor, Boston, Massachusetts 02111

Info. Line 800-323-3249 ext. 470 in Mass. Outside Mass. – 617-727-4900 ext. 470

<http://www.state.ma.us/dia>

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DIA Board # EXHIBIT B
(If Known):

5209201

Page 1 of 2
Please Print or Type**AGREEMENT FOR REDEEMING LIABILITY****BY LUMP SUM UNDER G.L. CH. 152****FOR INJURIES OCCURRING ON OR AFTER NOV. 1, 1986**

EMPLOYEE	Larry Pione	LUMP SUM AMOUNT	\$ 15,000.00
EMPLOYER	Massachusetts Port Authority	TOTAL DEDUCTIONS	\$ 2,250.00
INSURER	Massachusetts Port Authority	NET TO CLAIMANT	\$ 12,750.00
BOARD NUMBER	5209201	TOTAL PAYMENTS	\$ 15,000.00

(Weekly benefits plus lump sum)

DATE OF INJURY 10/16/2001

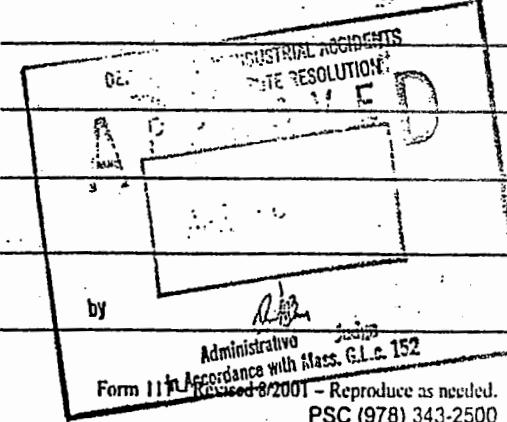
CHECK WHERE APPLICABLE

- Liability has been established by acceptance or by standing decision of the Board, the Reviewing Board, or a court of the Commonwealth and this settlement shall not redeem liability for the payment of medical benefits and vocational rehabilitation with respect to such injury.
- Liability has NOT been established by standing decision of the Board, the Reviewing Board, or a court of the Commonwealth and this settlement shall redeem liability for the payment of medical benefits and vocational rehabilitation benefits with respect to such injury.
- In addition to the lump-sum, the insurer agrees to pay all outstanding reasonable and related medical bills incurred as of this date.
- The employee is currently receiving a cost-of-living adjustment.

DEDUCTIONS: From the lump-sum amount as stated above, the amount(s) listed below will be deducted and paid directly to the following parties:

	NAME	ADDRESS
1. \$ 2,250.00 Attorney's Fee	Ferriter & Costello	171 Third Street, Cambridge, MA 02141
2. \$ Attorney's Expenses	(Please attach documentation)	
3. \$ Liens	Please attach discharges	
4. \$ Inchoate Rights	(Please specify release)	
5. \$		
6. \$		
7. \$		

(OVER)



AGREEMENT FOR REDEEMING LIABILITY BY LUMP SUM SETTLEMENT

(Page 2 of 2) EXHIBIT B

EMPLOYEE MEDICAL INFORMATION:

Age 60 No. of Dependents 0 Average Weekly Wage \$ 1,050.00 Compensation Rate \$ 630.00Social Security No.*: 025-32-5408 Occupation project manager Educational Background Assoc. Degree

On Social Security: YES() NO(x)

On Public Employee Disability Retirement: YES() NO(x)

DIAGNOSIS Depression/anxiety PRESENT MEDICAL CONDITION stablePresent Work Capacity: unable to work Third Party Action none**PLEASE GIVE A BRIEF HISTORY OF THE CASE AND INDICATE WHY THE SETTLEMENT IS IN THE EMPLOYEE'S BEST INTEREST (Specify all allocations):**

The employee alleges that he suffered severe anxiety and depression related to his bad faith termination by his employer on October 16, 2001. He requested benefits and the self-insured contested the claim. The employer contends that the termination was a bona fide personnel action.

A conference was held before Judge Harris and a denial order was issued. The employee appealed the order. This settlement was negotiated prior to the hearing.

The 11A report indicates that the employee is partially disabled.

Serious issues of causal relationship and compensable injury are present in this case. The employee's condition has improved with treatment

Based upon the issues of causal relationship and compensable injury, I believe the settlement to be in his best interest.
(Please attach a separate sheet if necessary.)

Received of Massachusetts Port Authority the Lump Sum of Fifteen Thousand
Dollars 15,000.00 dollars and zero cents (\$ 15,000.00)

This payment is received in redemption of the liability of all weekly payments now or in the future due me under the Workers' Compensation Act, for all injuries received by Larry Pione

on or about 10/16/2001 while in the employ of Massachusetts Port Authority

I fully understand that after all of the deductions herein I will receive
\$ 12,750.00. I am fully satisfied with and request approval of this settlement. This agreement has been
translated for me into my native language of English.

CLAIMANT:	SIGNATURE	ADDRESS	ZIP CODE
<u>✓</u>	<u>Jay P. Pione</u>	<u>36 Fowler Ave.</u>	<u>02151</u>
CLAIMANT'S COUNSEL:	<u>Michael C. Costello</u>	<u>Revere, MA</u>	
		<u>171 Third Street</u>	
		<u>Cambridge, MA</u>	<u>02141</u>
INSURER'S COUNSEL:	<u>Paul W. Goodman</u>	<u>20 Summer Street</u>	
		<u>Boston, MA</u>	<u>02210</u>

Signed this Sept 11 day of Oct, 2001 2003.

Ferrante & Costello
Attorneys at Law

(617) 527-6600

Fax (617) 527-2719

171 Third Street

Cambridge, Massachusetts 02141

February 19, 2002

Department of Industrial Accidents
600 Washington St., 7th. Floor
Boston, MA 02111
ATTN: Department 110

RE: Employee: Lamy Pione
Employer: Massachusetts Port Authority
Insurer: Massachusetts Port Authority
Date of Injury: 10/16/01

Dear Sir/Madam:

Enclosed is the original Employee's Claim. A copy was sent to the self-insurer, Massachusetts Port Authority.

Please note that the employee is requesting a conference be set down as soon as possible.

Kindly note my attorney's lien for fees under Massachusetts General Laws, Chapter 152 and Chapter 221, Section 50, as amended.

Your anticipated attention to this matter is greatly appreciated, and if you should have any questions, please do not hesitate to contact me at your convenience.

Very truly yours,

Michael C. Costello

Michael C. Costello

MCC:ah
Enclosures

cc: Massachusetts Port Authority, c/o Managed Benefits, 425 Summer Street, Boston, Ma 02120



Ferriter & Costello

Attorneys at Law

(617) 547-5600

Fax: (617) 547-3719

171 Third Street

Cambridge, Massachusetts 02141

February 19, 2002

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Massachusetts Port Authority
 c/o Managed Benefits
 425 Summer Street
 Boston, Ma 02120

RE: Employee: Larry Pione
Employer: Massachusetts Port Authority
Insurer: Massachusetts Port Authority
Date of Injury: 10/16/01

Dear Sir/Madam:

Please be advised that I represent the above-named employee in his claim for workmen's compensation resulting from incident on or about 10/16/01 while in the employment of Massachusetts Port Authority.

In accordance with M.G.L., Ch. 152, D.I.A. Regulation 452 C.M.R. 1:12(2), I am requesting at this time that you provide me with copies of any and all medical records which you have received pertaining to the above client's medical treatment which occurred as a result of this injury.

Furthermore, please be advised that this is a continuing request, so that I am asking that you provide me with any documents or records which you receive subsequent to this request.

You will find enclosed herewith a copy of Employee's Claim; the original of which is being filed with the Department of Industrial Accidents.

Kindly note my attorney's lien for fees under Massachusetts General Laws, Chapter 152 and Chapter 221, Section 50, as amended.

Very truly yours,

Michael C. Costello

Michael C. Costello

MCC:ah
 Encl.

cc: D.I.A., 600 Washington St., 7th. Floor, Boston, MA 02111

RECEIPT NO.: 7001 9490 0003 5311 8531

FORM 110

The Commonwealth of Massachusetts



Department of Industrial Accidents - Department 110

600 Washington Street - 7th Floor, Boston, Massachusetts 02111

Info. Line 800-323-3249 ext. 470 In Mass. Outside Mass. - 617-727-4900 ext. 470

<http://www.state.ma.us/dia>DIA Board EXHIBIT B
(If Known):**EMPLOYEE'S CLAIM**

FOR USE BY EMPLOYEES OR DEPENDENTS CLAIMING BENEFITS AS A RESULT OF INJURY OR DEATH.

ALL OTHER CLAIMANTS SHOULD USE FORM 115.

IMPORTANT - INSTRUCTIONS AND CODES ON THE REVERSE SIDE - Please Print Legibly or Type - Unreadable forms will be returned.

F M P L O E E R	1. Employee's Name (Last, First, MI): Pione, Larry	2. Social Security Number: 025-32-5408	3. Home Telephone No.: 781-284-4518	4. Number of Dependents: 0
	5. Home Address (No., Street, City, State & Zip Code): 36 Fowler Avenue, Revere, MA 02151		6. Date of Birth: 7/16/43	
	7. Name of Employee's Attorney (Last, First, MI) and Board of Bar Overseers Number (if no attorney leave blank)**: Costello, Michael C B.B.O. #101260			
	8. Attorney's Address: 171 Third Street, Cambridge, MA 02141		9. Attorney's Telephone No.: (617) 547-5600	
	10. Employer's Name & Address (No., Street, City, State & Zip Code): Mass Port Authority 1 Harbourside Drive, East Boston, MA 02128		10. Industry Code (See Reverse Side): 96	
	11. Worker's Compensation Insurance Carrier's Address and Tel. No. (NOT LOCAL AGENT/ADMINISTRATOR - See Instructions on reverse side): Mass Port Authority c/o Managed Benefits 425 Summer Street, Boston, MA 02120			
	12. DATE OF INJURY (mm/dd/yyyy): 10/16/01			
13. FIRST day of Total or Partial Incapacity to Earn Wages (mm/dd/yyyy): 10/16/01		14. FIFTH day of Total or Partial Incapacity to Earn Wages (mm/dd/yyyy): 10/20/01		
15. If Employee has Died, Date of Death (mm/dd/yyyy):		16. Describe Injury (Lower Back... leg... arm... etc.): Depression, Anxiety		
17. Briefly Describe How Injury/Exposure Occurred and Body Part(s) involved: Terminated in bad faith by employer		17a. Injury Code(s) a. 540 to body part a. 100 b. to body part b. 410 c. to body part c.		
18. Name(s) of Witness(es):		21. Has Employee Returned to Work? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
19. Employee's Regular Occupation: Financial Project Manager		20. Average Weekly Wage: \$ 1,050.00	<input type="checkbox"/> Actual <input checked="" type="checkbox"/> Estimated	
22. Has the Insurer Made Any Payments On Your Claim? <input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No If Yes - Indicate Type of Benefits and Amounts (Medical Bills, Wages, etc.): in the amount of \$ _____		
23. Section(s) of Law Claimed. Check all appropriate boxes below and attach documentation as required by M.G.L. c 152, § 7G, § 10(1) and 452 CMR 1.07.				
a. Sec. 34 <input type="checkbox"/> Total, Temporary, Incapacity Comp. from (date): from 10/16/01 to date and continuing and from _____ to _____				
b. Sec. 35 <input type="checkbox"/> Partial Incapacity Comp. from (date): from _____ to _____ and from _____ to _____				
c. Sec. 36 <input type="checkbox"/> Specific Comp. in the Amount of \$ _____				
d. Sec. 31 <input type="checkbox"/> Survivor's Benefits e. Sec. 33 <input type="checkbox"/> Burial Expenses f. Secs. 13 & 10 <input checked="" type="checkbox"/> Medical Expenses g. <input type="checkbox"/> Other (Specify Soc): 13A				
24. Name and Address of Facility Where Employee was First Treated: Belmont Medical Associates, 25 Concord Ave, Cambridge, MA		25. Name of Treating Physician: Dr. Ranere		
26. Employee's/Cclaimant's Signature: Larry Pione		27. Date (mm/dd/yyyy): 2-20-02		
28. Attorney's Signature (if applicable): Michael C Costello		29. Date (mm dd yyyy): 2-20-02		

* Disclosure of Social Security Number is voluntary. It will aid in the processing of your claim.

** Representation by an attorney is not required (see instructions on reverse side).

Form 110 - Revised 8/2001 - Reproduce as needed

Attached is medical report of Bruce Freeman, L.I.C.S.W. dated 11/6/01

(When completed, this form goes to the employee, not to the Department of Labor.)

OMB No.: 1215-0181
Expires: 06/30/02

1. Employee's Name

Harry Pione

2. Patient's Name (If different from employee)

Same

3. Page 4 describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category.

(1) (2) (3) (4) (5) (6) , or None of the above

4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

Marked stress and anxiety. Abdominal pain.

5. a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity² if different):

Approx 10/10/01 - Duration unknown - may persist indefinitely.

b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6 below)?

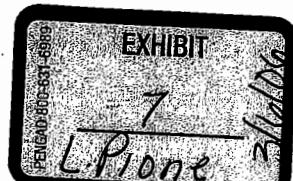
If yes, give the probable duration:

c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated² and the likely duration and frequency of episodes of incapacity²:

likely duration is 12 weeks or so. Patient is advised to rest and be stress free.

¹ Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

² "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.



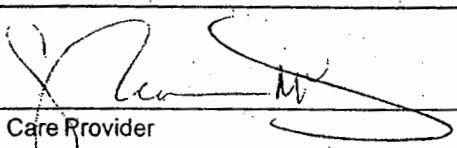
8. a. If leave is required to care for a family member of the employee with a serious health condition, besides the patient, does the patient require assistance for basic medical or personal needs or safety, or for transportation?

EXHIBIT B

n/a

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:


Signature of Health Care Provider

Address

BELMONT MEDICAL ASSOC., INC.
725 CONCORD AVENUE #4100
CAMBRIDGE, MA 02138
(617) 864-8822

Internal Medicine
Type of Practice

Telephone Number

11-13-01

Date

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

Employee Signature

Date

This policy has been approved by the Massport Board.

POLICY ON EMPLOYMENT TERMS AND CONDITIONS

I. SCOPE AND EFFECTIVENESS

A. Scope

All employees, as defined in Section II below, shall be subject to this Policy unless otherwise expressly excluded. None of the provisions of this Policy shall pertain to any employee of the Authority whose terms and conditions of employment are established by a collective bargaining agreement or whose employment with the Authority is considered temporary, nor shall this Policy apply to independent contractors, students or leased workers.

B. Effectiveness

The Authority shall review this policy each year at a meeting of its Personnel Committee. In the event that the Authority changes the benefit provided for in Section VII(D) as it is amended from time to time, the change shall not be effective for any ESPM employee employed at the time of the change until twelve months following the date of the change.

II. DEFINITIONS

- A. "Days" means working days.
- B. "Employee" means a person duly appointed to a regular non-union employment position or a job share position (provided the job share contract has been signed and approved) with the Authority. Unless otherwise specified, the term "employee" as used in this Policy shall refer to both MSPA and ESPM employees.
- C. "ESPM" or "Executive, Senior Professional, or Senior Managerial" employee means any employee in a non-union position classified at Level 6 or above in the Authority's classification plan, and includes the position of Executive Director.
- D. "MSPA" or "Managerial, Supervisory, Professional, or Administrative" employee means any employee in a non-union position classified at Level 5 or below in the Authority's classification plan who has been continuously employed by the Authority for more than six months.



E. "Termination" means cessation of an employee's employment at the AUTHORITY EXHIBIT B any reason, including without limitation, voluntary resignation, voluntary retirement, retirement for superannuation, involuntary termination pursuant to disciplinary procedures, involuntary termination for substandard performance, or involuntary termination due to reduction in staff, reorganization, or as a result of a change in Administration or changing needs. Any involuntary termination of an MSPA employee, or any material reduction in salary or classification for an MSPA employee by reason of demotion, involuntary transfer, unpaid suspension or otherwise, generally will entitle the affected MSPA employee to invoke the Hearing and Grievance Procedure described in Section V(F) as to the relevant personnel action.

F. "Hearing and Grievance Procedure" means the procedure outlined in Section V(F) below.

III. PERFORMANCE APPRAISALS

A. Annual Performance Appraisals

1. Employees are evaluated on performance criteria established by the Executive Director or his/her designee. Annual performance appraisals for each employee generally are conducted on a fiscal year basis as the Executive Director shall direct. Performance appraisals for each employee shall be summarized for each employee in a performance appraisal rating based on the established criteria. The performance appraisal form shall include a rating scale that will measure the employee's overall performance.
2. At the request of the Board, performance ratings shall be submitted by the Executive Director to the Board.
3. Any Department Head may request from the Director of Human Resources an extension of up to six months for the submission of a performance appraisal for a particular employee, if, in the Department Head's opinion, additional time is required to evaluate the performance of such employee. If the Director of Human Resources grants such a request, the Department Head shall promptly notify the affected employee of the performance appraisal schedule to be followed. The Executive Director shall have the same option with respect to employees who report directly to him/her.

B. Salary Review**EXHIBIT B**

An annual salary review for employees shall be conducted as the Executive Director shall direct. As part of the budget cycle of each fiscal year, the Executive Director shall recommend to the Board a merit percentage increase, if appropriate. If a merit percentage increase is not rejected by the Board, then merit increases, as determined by Department Heads based on performance appraisal results, shall become effective on July 1 of each year. Employees must receive a rating at least equivalent to a satisfactory rating on their annual performance appraisals in order to be eligible for any merit increase adjustment.

IV. EMPLOYMENT STATUS**A. MSPA Employees**

1. For the first six months of their employment, employees in non-union positions classified at Level 5 or below in the Authority's classification plan shall be considered "at-will" employees of the Authority. Any MSPA employee who has been continuously employed by the Authority for more than six months shall be considered, for purposes of this Policy, an employee of the Authority with a continuing employment status that will terminate involuntarily only upon good faith compliance with the terms and conditions of this Policy. After the first six months of employment, an MSPA employee may not be terminated involuntarily except for "just cause" (as that term is defined in Section V), a statement of which shall be provided at the time notice of termination is given. An MSPA employee employed for more than six months shall be entitled to invoke the Hearing and Grievance Procedure to review the causes stated for any involuntary termination.
2. Procedures for termination of an MSPA employee are outlined in Section V below. Any MSPA employee who is terminated from employment, either voluntarily or involuntarily, shall be required to return all Authority property in his or her possession, including the items listed on the final termination form, prior to release of any termination benefit to which the employee would otherwise be entitled pursuant to this Policy or any other policy of the Authority.

B. ESPM Employees

1. Employment of an ESPM employee is on an "at-will" basis.
2. Guidelines for termination of an ESPM employee are outlined in Sections V and VII below. Any ESPM employee who is terminated from employment, either voluntarily or involuntarily, shall be required to return all Authority property in his or her possession, including the items listed on the final

EXHIBIT B

termination form, prior to release of any termination benefit to which the employee would otherwise be entitled pursuant to this Policy or any other policy of the Authority.

C. Management Discretion

Nothing in this Policy shall be construed to limit or alter the sole discretion of the Authority, acting through its Executive Director or his/her designee, to discipline, demote, transfer, suspend, terminate or take any other personnel action as to any employee for any reason deemed by management to be appropriate from time to time, and under any terms and conditions as to such action that the Authority, acting through its Executive Director or his/her designee, chooses to impose, except that MSPA employees may be involuntarily terminated, or subjected to a material reduction in salary or classification, only for "just cause" (as that term is defined in this Policy) in accordance with Sections II (E) and V.

V. TERMINATION: MSPA Employees

For purposes of this Policy, the involuntary termination of an MSPA's employment for "just cause" shall mean involuntary termination for one or more of the reasons set forth in Sections V(B)-(E) below. "Just cause" for involuntary termination as defined in this Section V will also constitute "just cause" for any material reduction in an MSPA employee's salary or classification.

A. Voluntary Resignation/Retirement

The Authority shall request a minimum of two weeks written notice of any such resignation or retirement.

B. Reorganization/Layoff

1. An MSPA employee is subject to involuntary termination due to layoff and/or departmental reorganization. Just cause for such layoff and/or departmental reorganization shall include insufficient work as determined by the Department Head or adverse financial conditions affecting part of the Authority, the Authority as a whole, or any particular unit of the Authority.

2. An MSPA employee subject to a personnel action described in Section V(B)(1) above shall be entitled to reinstatement if the particular position for which he/she is involuntarily terminated, as described in the previous paragraph, is filled within one year of the date of layoff or termination, provided that the employee notifies the Authority in writing of an interest in reinstatement within 30 days of such layoff or involuntary termination.

C. Disciplinary Termination

1. The Authority, acting through the Executive Director or his/her designee, typically shall impose a progressive disciplinary process when an MSPA employee has a problem on the job which may lend itself to rectification through such process. Supervisors and managers are authorized to issue both oral and written warnings and/or any other form of progressive discipline up to and including termination and may impose such discipline for infractions, policies and/or procedures, or behaviors disruptive to the workplace and/or productivity, which they deem to merit such discipline. Any MSPA employee who receives a warning generally will have the opportunity, if he/she so requests, to meet with his/her supervisor to discuss the issue. The progressive disciplinary process described in this paragraph may, at the discretion of the Authority, acting through its Executive Director or his/her designee, include, among other things, oral warning(s), written warning(s), suspension and/or termination, not necessarily in that order. The severity of the infraction and the employee's employment record, among other things, may determine the degree of disciplinary action taken by management. In addition, at management's sole discretion, serious disciplinary sanctions, up to and including termination, may be imposed in lieu of any step in the progressive discipline process. Any involuntary termination implemented in accordance with this Section V(C)(1) shall constitute termination for just cause.
2. In the case of infractions of policies and/or procedures, or behaviors disruptive to the workplace and/or productivity, which the Authority, acting through its Executive Director or his/her designee, deems in its sole discretion to be serious, including but not limited to infractions or behaviors involving the MSPA employee's honesty, abusive or harassing behavior toward other employees or the public, and/or workplace substance abuse, the Authority, acting through the Executive Director or his/her designee, may discipline or terminate the MSPA employee without first imposing progressive discipline. Any involuntary termination implemented in accordance with this Section V(C)(2) shall constitute termination for just cause.

D. Unsatisfactory Performance

1. The MSPA employee may be put on probation for a three month period for unsatisfactory performance at any time by his/her Department Head. No MSPA employee may be terminated as a result of poor performance without having received notice and an opportunity to cure as described herein. Termination for poor performance (as determined at the discretion of the Authority, acting through its Executive Director or his/her designee), after said notice and opportunity to cure has been completed, shall constitute termination for just cause. Notice for these purposes shall consist of:

a. a written letter to the employee from the Department Head; **EXHIBIT B**

b. any rating on an annual performance appraisal that reflects a less than satisfactory review, as identified on the performance appraisal form.

Such notice shall contain specific reference to the defects in the MSPA employee's performance, and a statement of the expected standards of performance. The MSPA employee shall have the opportunity to meet with his/her manager and the Department Head to discuss proposed remedies. If appropriate, the MSPA employee may be referred to the Director of Human Resources for additional resources.

2. If the MSPA employee's performance has not reached a satisfactory level at the end of the probationary period, the Department Head may terminate the MSPA employee. Notwithstanding anything to the contrary in Section V(D)(1), if the MSPA employee's performance does not show reasonably sufficient improvement (as determined at the discretion of the Authority, acting through its Executive Director or his/her designee) during the probationary period, the Department Head may terminate the MSPA employee at any time after the first four weeks of the probationary period have elapsed, provided that the Department Head receives prior written approval of such termination decision from the Director of Human Resources. At his/her discretion, the Department Head may extend the probationary period. This extension shall be no longer than three months. If the employee has not achieved satisfactory performance by the end of the extension, the employee may be terminated.

E. Probationary Transfer

1. There may be circumstances where the Authority's business needs may best be served by transferring to a new position an employee who is performing poorly in his/her current position and who would otherwise be subject to probation in that position. In such cases, the Director of Human Resources, with the approval of the affected Department Head(s), may authorize the probationary transfer of an employee to a new position in the Authority. In such cases, the employee will be placed on three months' probation, commencing on the date of the transfer. The employee will, prior to the transfer, receive written notice of the transfer, which shall describe, at a minimum, the length of the employee's probationary period, the performance deficiencies which form the basis for the probation and transfer and the job title and job description of the position to which the employee is being transferred.
2. Following the transfer, the employee generally will meet with his/her new supervisor, who shall review with the employee the job description for the

new position and who shall communicate the supervisor's work performance expectations. The employee and the new supervisor typically will meet during the employee's first month in the new position to review the employee's job performance.

3. In the event the employee's new Department Head determines at any time after the first four weeks of the probationary period have elapsed that the employee is unable or unwilling to perform the duties of his/her new position the employee may, with the approval of the Director of Human Resources, be immediately terminated by the Department Head for poor performance. At the end of the probationary period described in Section V(E)(1) above, the Department Head may, with the approval of the Director of Human Resources, extend the probationary period for up to three months. If the employee has not achieved satisfactory performance by the end of the extended probationary period, the employee may be terminated for poor performance. Termination of an MSPA employee in accordance with this paragraph shall constitute termination for just cause.

F. Hearing and Grievance Procedure

This Hearing and Grievance Procedure may be invoked by any MSPA employee discharged pursuant to Sections V(B), (C), (D) or (E) above, as well as by any MSPA employee entitled to invoke the same pursuant to Section II(E) above. Employees eligible to invoke this procedure MUST do so if they wish to challenge any personnel decision to which the Hearing and Grievance Procedure applies.

1. Hearing Process

Any MSPA employee upon whom the Authority, acting through its Executive Director or his/her designee, is considering imposing a personnel action subject to this Hearing and Grievance Procedure generally will receive notice of that fact and an opportunity to respond to management's basis for considering such action before the relevant personnel action is implemented.

2. Grievance Procedure

- a. During the grievance procedure set forth below, an MSPA employee shall be considered terminated and remain off the payroll, or shall otherwise remain subject to the terms of the challenged personnel decision, unless and until the challenged decision is overturned through this grievance procedure. If an MSPA employee's appeal is successful and the relevant decision is overturned, retroactive pay may be awarded, as appropriate.

b. The following steps shall constitute the grievance procedure:

STEP 1:

Within five days of receipt of the statement of reasons for the relevant personnel decision, the MSPA employee must submit to his/her Department Head written objections to that statement. The Department Head may, at his/her discretion, reverse the decision by expressly withdrawing the statement of reasons for such decision.

STEP 2:

If the statement of reasons is not withdrawn within five days of the MSPA employee's objection to the Department Head, the MSPA employee shall have five further days to request that a hearing be held. Said hearing shall be conducted by the Director of Labor Relations, or such other suitable employee that the Executive Director may designate, within five days of the request for hearing, and the purpose of said hearing shall be to inquire into whether the statement of reasons has support in the underlying factual circumstances and whether those facts constitute "just cause" for termination under the terms of this Policy, or constitute "just cause" under this Policy for a material reduction in salary or classification to which the terms of this Hearing and Grievance Procedure apply, as appropriate. Any allegation of unlawful discrimination in employment opportunity raised during the grievance procedure shall, in addition to being considered at the various procedural steps during which it is raised, be referred to the Director of Compliance or his/her designee for investigation. The hearing shall be suspended until such time as the Director of Compliance's, or his/her designee's, investigation has been concluded. At the conclusion of the investigation, the Director of Compliance or his/her designee shall report the findings to the person conducting the hearing ("hearing officer").

Any MSPA employee making such an allegation of discrimination with respect to his/her termination or other personnel action subject to this Hearing and Grievance Procedure shall have the right to have the Director of Compliance or his/her designee present at the hearing. Any report of the Director of Compliance or his/her designee hereunder shall not be conclusive but shall be entitled to due consideration.

STEP 3:

If the statement of reasons is not withdrawn within five days of the issuance of findings by the hearing officer, the MSPA employee shall have five further days to appeal in writing to the Executive Director. The Executive Director, if he/she so designates, the Deputy Executive Director, shall make a decision on any such appeal and said decision shall be final and without further recourse except as provided in Step 4.

STEP 4:

If the MSPA employee claims that the relevant personnel decision was a violation of his/her right to free speech or freedom of association protected by the First and Fourteenth Amendments of the United States Constitution as part of the Step 1 written objections and presents evidence supporting such claim at the hearing, the MSPA employee shall be entitled within five days of receiving the decision of the Executive Director, or the Deputy Executive Director, as the case may be, adverse to the employee to commence arbitration of that claim with the American Arbitration Association. If the MSPA employee prevails, all costs of arbitration (exclusive of attorney's fees) shall be borne by the Authority. If the Authority prevails, fifty percent of the arbitration costs (exclusive of attorney's fees) will be borne by the MSPA employee. The burden of persuasion shall be on the MSPA employee to establish that the exercise of constitutionally protected rights addressed by this paragraph (Step 4) was the primary motive for the relevant personnel decision.

3. The Hearing and Grievance Procedure involves the employment relationship between the Authority and the individual employee. Therefore, the opportunity to meet described in the above paragraphs (with the exception of Step 4) is accorded to the MSPA employee, not to legal counsel or any other representative of the MSPA employee. Should the MSPA employee request the presence of legal counsel or other representation, such presence may be allowed on the condition that the individual observe but not participate in the meeting between the Authority and its employee. If the MSPA employee is accompanied by legal counsel, the Chief Legal Counsel, or his/her designee, may serve as the legal advisor for the Authority in the meeting. Notwithstanding the foregoing, to the extent that anything in this subsection V(F)(3) is inconsistent with governing law, said law shall apply.

G. Severance Allowance

MSPA employees may be considered for severance allowance if, in the sole discretion of the Authority, acting through the Executive Director or Deputy Executive Director, extenuating circumstances warrant such consideration. MSPA employees with less than sixty (60) months service to whom the Authority, acting through its Executive Director or his/her designee, in its discretion grants a severance allowance shall be paid said severance in accordance with the severance formula established by vote of the Authority on June 10, 1976, as amended on June 18, 1987.

VI. TERMINATION: ESPM Employees

A. Voluntary Resignation/Retirement

The Authority shall request a minimum of two weeks written notice of any such resignation or retirement.

B. Involuntary Termination

ESPM employees are "at-will" employees of the Authority. As such, they may be terminated at any time for any reason, with or without notice. ESPM employees terminated for reasons other than "cause", as that term is defined in Section VII below, shall be provided with severance in accordance with Section VII.

VII. SEVERANCE: ESPM Employees

ESPM employees terminated for any of the reasons described in Sections VII(A), (B) or (C) below will be deemed to have been terminated for "cause" and will not be entitled to severance. ESPM employees terminated for reasons other than "cause" will be provided with severance in accordance with Section VII(D).

A. Disciplinary Termination

1. The Authority, acting through the Executive Director or his/her designee, typically shall impose a progressive disciplinary process when an ESPM employee has a problem on the job which may lend itself to rectification through such process. Supervisors and managers are authorized to issue both oral and written warnings and/or any other form of progressive discipline up to and including termination and may issue such discipline for those infractions of policies and/or procedures, and/or behaviors disruptive to the workplace and/or productivity, which they deem to merit such discipline. The infractions and/or behaviors described in the preceding sentence shall constitute grounds for termination for cause. Any ESPM employee who receives a warning generally will have the opportunity, if he/she so requests, to meet with his/her supervisor to discuss the issue. The progressive disciplinary process described in this paragraph may, at the discretion of the Authority, acting through its Executive Director or his/her designee, include, among other things, oral warning(s), written warning(s), suspension and/or termination, not necessarily in that order. The severity of the infraction and the employee's employment record, among other things, may determine the degree of disciplinary action taken by management. In addition, at the sole discretion of the Authority, acting through its Executive Director or his/her designee, serious disciplinary sanctions, up to and including termination, may be imposed in lieu of any step in the progressive

discipline process.

2. In the case of infractions or behaviors constituting cause pursuant to Section VII(A)(1) above which the Authority, acting through its Executive Director or his/her designee, deems in its sole discretion to be serious, including but not limited to infractions or behaviors involving the ESPM employee's honesty, abusive or harassing behavior toward other employees or the public and/or workplace substance abuse, the Authority, acting through the Executive Director or his/her designee, may discipline or terminate the ESPM employee without first imposing progressive discipline.
3. In the case of a demotion, involuntary transfer, reduction in pay, or involuntary termination, the ESPM employee typically will receive reasonable notice that (1) provides an explanation of why discipline is being contemplated; (2) explains the possible disciplinary action that may be taken; and (3) provides a reasonable amount of time for the ESPM employee to prepare to respond. The ESPM employee generally will thereafter have an opportunity to meet with his or her Department Head (or the Department Head's designee) and the Director of Human Resources to discuss the action being contemplated. Under appropriate circumstances, immediate suspension without pay, demotion or termination may be required; provide the notice and opportunity to be heard discussed above generally will be provided subsequently in due course.
4. The disciplinary process involves the employment relationship between the Authority and the individual employee. Therefore, the opportunity to meet described in the previous paragraph is accorded to the ESPM employee, not to legal counsel or any other representative of the ESPM employee. Should the ESPM employee request the presence of legal counsel or other representation, such presence may be allowed on the condition that the individual observe but not participate in the meeting between the Authority and its employee. If the ESPM employee is accompanied by legal counsel, the Chief Legal Counsel, or his/her designee, may serve as the legal advisor for the Authority in the meeting. Notwithstanding the foregoing, to the extent that anything in this subsection VII(A)(4) is inconsistent with governing law, said law shall apply.

B. Unsatisfactory Performance

1. The ESPM employee may be put on probation for any period that the Authority, acting through its Executive Director or his/her designee, deem appropriate, up to a three month period, for unsatisfactory performance at any time by his/her Department Head. ESPM employees generally will not be terminated as a result of poor performance without having received notice and an opportunity to cure during a probationary period. Notice of

probationary period typically will consist of:

EXHIBIT B

- a. a written letter to the employee from the Department Head; or
- b. any rating on an annual performance appraisal that reflects a less than satisfactory review, as identified on the performance appraisal form.

Such notice normally will contain specific reference to the defects in the ESPM employee's performance, and a statement of the expected standards of performance. The ESPM employee typically will have the opportunity to meet with his/her manager and the Department Head to discuss proposed remedies. If appropriate, the ESPM employee may be referred to the Director of Human Resources for additional resources.

2. If the ESPM employee's performance has not reached a satisfactory level at the end of the probationary period, the Department Head may terminate the ESPM employee. If the ESPM employee's performance does not show reasonably sufficient improvement during the probationary period, the Department Head may terminate the ESPM employee during the probationary period, provided that the Department Head receives prior written approval of such termination decision from the Director of Human Resources. At his/her discretion, the Department Head may extend the probationary period. This extension shall be no longer than three months. If the employee has not achieved satisfactory performance by the end of the extension, the employee may be terminated.

C. Probationary Transfer

1. There may be circumstances where the Authority's business needs may be served by transferring to a new position an employee who is performing poorly in his/her current position and who would otherwise be subject to probation. In such cases, the Director of Human Resources, with the approval of the affected Department Head(s), may authorize the probationary transfer of an employee to a new position in the Authority. In such cases, the employee will be placed on probation, commencing on the date of the transfer. The employee will, prior to the transfer, receive written notice of the transfer, which typically will describe, at a minimum, the length of the employee's probationary period, the performance deficiencies which form the basis for the probation and transfer and the job title and job description of the position to which the employee is being transferred.
2. Following the transfer, the employee typically will meet with his/her new supervisor, who shall review with the employee the job description for the new position and who shall communicate the supervisor's work performance expectations. The employee and the new supervisor generally

will meet during the employee's first month in the new position (assuming the employee remains employed at that time) to review the employee's job performance.

3. In the event the employee's new Department Head determines at any time during the course of or at the conclusion of the probationary period that the employee is unable or unwilling to perform the duties of his/her new position, the employee may, with the approval of the Director of Human Resources, be immediately terminated by the Department Head for poor performance. At the end of the probationary period described in Section VII(C)(1) above, the Department Head may, with the approval of the Director of Human Resources, extend the probationary period for up to three months. If the employee has not achieved satisfactory performance by the end of the extended probationary period, the employee may be terminated for poor performance.

D. Severance Policy

1. The severance policy applies to all involuntary ESPM employee terminations other than terminations for "cause" as described in Section V above; provided, that it shall not apply to job share employees and employees working a part-time work schedule who are terminated after they have been offered a comparable position with a full-time schedule and have rejected said offer.
2. Any ESPM employee having completed one year of satisfactory service at the time of an involuntary termination (other than a termination for "cause") shall receive eight weeks base salary severance allowance in accordance with Section VII(D)(1) above. An additional two weeks base salary shall be awarded for each additional year of service at Massport, for a combined total not to exceed 26 weeks. In addition, at the sole discretion of the Authority, acting through its Executive Director or his/her designee and without any obligation to do so, the Authority may, acting through the Executive Director or Deputy Executive Director, pay to any ESPM who has completed at least five years of service an additional severance allowance. The amount of such additional allowance shall not exceed three months' base salary. In granting such discretionary severance allowance the Authority, acting through its Executive Director or his/her designee, shall consider the employee's length of service and job performance. The severance policy as discussed above shall, for ESPM employees, replace previous severance allowance policies, including without limitation the severance allowance policy established by vote of the Authority on June 1976, as amended June 18, 1987.



GUARDIAN

February 24, 2005

Group LTD Claims

Larry Pione
 36 Fowler Avenue
 Revere, MA 02151

Re: NOTICE OF UNDERPAYMENT
 Plan # 298126
 Claim# 017262

Dear Mr. Pione:

We are writing regarding an increase in your Long Term Disability Monthly benefit.

On February 9, 2005, we received a letter from you stating that we were grossly misinformed by your employer and a letter dated July 6, 2001 from Massachusetts Port Authority addressed to you stating that your annual salary of \$51,059.50 was effective as of July 1, 2001.

The salary of \$44,830.50 was the salary reported for you on Massachusetts Port Authority's Census as of your date last worked October 16, 2001. Based on the information provided by you, we have adjusted your monthly earnings to reflect \$4,254.96. The result is an underpayment in the amount of \$7,464.00.

Below are our calculations as to how we arrived at your underpayment and new monthly benefit.

Your Benefits

Guardian Long Term Disability	01/16/2002 – 01/15/2004	\$2,242.00/month
Guardian Long Term Disability Revised	01/16/2002 – 01/15/2004	\$2,553.00/month
Workers' Compensation Benefit	01/16/2002 – 01/15/2004	\$ 212.50/month
Social Security Disability Benefit	01/01/2003 – 01/15/2004	\$ 938.00/month

We Paid:

01/16/2002 – 12/31/2002 11 months 15 days @ \$2,029.50/month = \$23,339.25
 (\$2,242.00 - \$212.50)

01/01/2003 – 01/15/2004 12 months 15 days @ \$1,091.50/month = \$13,643.75
 Total \$36,983.00

The Guardian Life Insurance Company of America

Northeast Regional Office P.O. Box 26025 Lehigh Valley, PA 18002-6025
 tel: 800.538.4583 fax: 610.807.8221 e-mail: group_ltd_claims@glic.com



We Should Have Paid:

01/16/2002 - 12/31/2002 11 months 15 days
(\$2,553.00 - \$212.50)

@ \$2,340.50/month = \$26,915.75

01/01/2003 - 01/15/2004 12 months 15 days
(\$2,553.00 - \$212.50 - \$938.00)

@ \$1,402.50/month = \$17,531.25
Total \$44,447.00

Therefore, \$44,447.00 less \$36,983.00 equals **\$7,464.00 underpaid amount due.**

This calculated underpayment amount will be sent to you under separate cover.

If you have any questions regarding this letter, please contact me at extension 6812.

Sincerely,



Donna Pavlick
Group LTD Disability Analyst

cc: Attorney Brassil



GUARDIAN

January 24, 2005

Sarrouf, Tarricone & Flemming

Attn: Elise Brassil

95 Commercial Wharf

Boston, MA 02110

Re: Larry Pione
Long Term Disability
Group Plan # 298126
Group Claim # 017262

Dear Attorney Brassil:

We have completed our review of Mr. Pione's Long-Term Disability claim and have determined that benefits are payable.

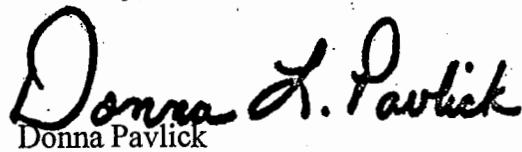
With the completion of the 90 day "Elimination period", benefit payments commence on January 16, 2002. Mr. Pione's payment will cover the period January 16, 2002 through January 15, 2004. The gross monthly benefit is \$2,242.00. This amount may be reduced by income from other sources. Mr. Pione should refer to the following sections of the Certificate Booklet: "Income We Integrate With"; "Application for Other Income Required"; and "Overpayments - Our Right for Recovery".

The condition for which Mr. Pione is claiming disability has a limited benefit duration under the Group Long Term Disability Plan. Please refer to the section of the Certificate Booklet entitled "Special Limitations." We are paying your claim for the diagnosis of Stress and Anxiety, ICD 9- 300.0.

Mr. Pione has reached his maximum duration of benefits as of January 15, 2004. Therefore, no further benefits are payable.

If you have any questions, please contact our office at (800)-538-4583.

Sincerely,



Donna L. Pavlick

Donna Pavlick

Group Disability Benefit Analyst

cc: Larry Pione

The Guardian Life Insurance Company of America

Northeast Regional Office Group LTD Claims P.O. Box 26025 Lehigh Valley, PA 18002-6025
tel: 800.538.4583 fax: 610.807.8221 e-mail: group_ltd_claims@glic.com



GUARDIAN

December 6, 2004

Sarrouf, Tarricone & Flemming
Attn: Elise A. Brassil
95 Commercial Wharf
Boston, MA 02110

Re: Long Term Disability

Claimant - Larry Pione
Group Plan # 298126
Group Claim # 17262

Dear Attorney Brassil,

I am writing to inform you we have made an Appeals Committee decision with regard to Larry Pione's Long Term Disability claim. Upon thorough review of the information submitted we have decided to reverse our original decision to decline benefits, due to the late filing of his claim.

After careful review of all of the medical documentation submitted, it has been determined that Mr. Pione's disability began on October 18, 2001 due to the conditions of "Anxiety and Stress". Therefore, Mr. Pione's claim for disability benefits will be paid under the "Special Limitations" plan provision of Plan 298126, as follows:

Special Limitations

We limit the maximum payment period, if you are disabled due to a condition listed below.

The maximum payment period for all such periods of *disability* is 24 months. This is a combined maximum for all such conditions and all periods of *disability*.

We limit the maximum payment period for disabilities caused or contributed to by the following conditions:

- Mental or emotional conditions
- Drug or alcohol abuse
- Musculoskeletal and connective tissue disorders including, but not limited to:

The Guardian Life Insurance Company of America, New York, NY

Northeast Regional Office Group LTD Claims P.O. Box 26025 Lehigh Valley, PA 18002-6025
tel: 800.538.4583 fax: 610.807.8221 e-mail: group_ltd_claims@glic.com

- Sprains or strains of joints and muscles
- Soft Tissue Conditions
- Repetitive motion syndrome or injuries
- Fibromyalgia
- Chronic fatigue conditions including, but not limited to:
 - Chronic fatigue syndrome
 - Chronic fatigue immunodeficiency syndrome
 - Epstein-barr syndrome
- Chemical and environmental sensitivities
- Headache
- Chronic pain, myofascial pain
- Gastro-esophageal reflux disorder
- Irritable bowel syndrome
- Vestibular dysfunction, vertigo, dizziness...

Please be advised, the above is only a brief outline of the plan provisions. Mr. Pione should refer to his Plan Booklet for a complete summary.

Mr. Pione's claim file has been forwarded to a benefit analyst for further processing. Benefits covering the period January 16, 2002 through January 15, 2004 will be issued under separate cover.

Should Mr. Pione wish to appeal this decision, he must state his reasons for appeal in writing and provide Guardian with objective medical evidence supporting a physical condition, so severe, that precludes him from working full-time.

The company reserves all of its rights and defenses under the terms of the plan or as provided by law. For instruction on how to appeal this decision, please refer to the attached document. Your appeal should be accompanied by all the information requested above.

Please feel free to contact our office at (800) 538-4583 with any questions.

Sincerely,



Roberta Mortimer
Group Disability Claims
Appeals Committee Member

CC: Mr. Larry Pione



ERISA – NEW PROCEDURES FOR DISABILITY CLAIMS

HOW TO APPEAL THIS DECISION

You have the right to appeal this decision under regulations specified by the Employee Retirement Income Security Act (ERISA) 1974, as amended. You need to:

- Submit your formal request for reconsideration in writing within 180 days of the date of the attached letter with the additional medical and/or other information mentioned within the letter. Please include your claim and plan number and address your correspondence and enclosures to:

The Guardian Life Insurance Company of America
P.O. Box 26025
Lehigh Valley, PA 18002-6025

Guardian will notify you of its decision within 45 days of receipt of your written request for review. If special circumstances require an extension of time for a decision on review, the review period may be extended by an additional 45 days (90 days in total). Guardian will notify you in writing if an additional 45 day extension is needed. If an extension is necessary due to your failure to submit the information necessary to decide the appeal, the notice of extension will specifically describe the required information, and you will be afforded at least 45 days from receipt of the notice to provide the specified information. If you deliver the requested information within the time specified, the 45 day extension of the appeal period will begin after you have provided the information. If you fail to deliver the requested information within the time specified, we may decide your appeal without that information.

You will have the opportunity to submit written comments, documents, or other information in support of your appeal. You will have access to all relevant documents as defined by applicable U.S. Department of Labor regulations. The review of the adverse benefit determination will take into account all new information, whether or not presented or available at the initial determination. No deference will be afforded to the initial determination. Unless there are special circumstances, this administrative appeal process must be completed before you begin any legal action regarding your claim.

The review will be conducted by us and will be made by a person different from the person who made the initial determination and such person will not be the original decision maker's subordinate. In the case of a claim denied on medical judgment, we will consult with a health professional with appropriate training and experience. The health care professional who is consulted on appeal will not be the individual who was consulted during the initial determination or a subordinate. If the advice of a medical or vocational expert was obtained by the Plan in connection with the denial of your claim, we will provide you with the names of each such expert, regardless of whether the advice was relied upon.

A notice that your request on appeal is denied will contain the following information:

- the specific reason(s) for the appeal determination;
- a reference to the specific Plan provision(s) on which the determination is based;
- a statement disclosing any internal rule, guidelines, protocol or similar criterion relied on in making the adverse benefit determination (or a statement that such information will be provided free of charge upon request);
- a statement describing your right to bring a civil suit under federal law;
- a statement that you are entitled to receive upon request, and without charge, reasonable access to copies of documents, records or other information relevant to the determination; and
- a statement that "you or your plan may have other alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."

Notice of the determination may be provided in written or electronic form. Electronic notices will be provided in a form that complies with any applicable legal requirements. Guardian does not waive our defenses under the terms of the plan or as provided by law.

BRUCE H. FREEMAN, L.I.C.S.W.
388 Pleasant Street
Malden, MA 02180
Telephone: (781) 321-2224

TO: Stephen Ranere, M.D.
FROM: Bruce Freeman, LICSW
DATE: November 6, 2001
RE: Larry Pione **DOB:** 07/16/43

Mr. Pione is a fifty-eight (58) year old single white male who began individual therapy with this writer on October 18, 2001. He was referred by his employee assistance program. Mr. Pione has worked for Massport as a "Special Financial Project Manager" for four (4) years. He reports "the whole work environment is so hostile." I am a fifty-eight (58) year old man and they are pushing me out." Increased stress for for "a couple of years" led to a verbal altercation with another employee on October 16, 2001. He got physically sick after that conflict and told his secretary that "I had to leave." Mr. Pione presents as very anxious and depressed. He reports difficulty falling asleep, wakes up frequently, difficulty focusing, appetite is only "fair". "I have hives all over my body."

At this time, it is difficult to imagine Mr. Pione returning to the workplace.

Respectfully,



Bruce Freeman, LICSW

BF:sjb



EXHIBIT C

MAY 20 2005

-DISMISSAL and NOTIFICATION of RIGHTS-

TO: Camille F. Sarrouf, Esq.
Sarrouf Tarricone & Flemming
95 Commercial Wharf
Boston, MA 02110

Case: Pione v. Mass Port Authority
Docket No: 021302528
EEOC No: 16CA202773
Investigator: Katherine M. Martin, Esq.

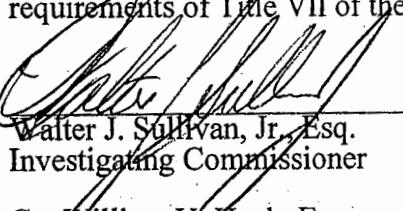
Your complaint has been dismissed for the following reasons:

- The facts you allege fail to state a claim under any of the statutes the Commission enforces.
- Respondent employs less than the required number of employees
- Your complaint was not timely filed with the Commission, i.e. you waited too long after the date(s) of the alleged discrimination to file. Because it was filed outside the time limit prescribed by law, the Commission cannot investigate your allegations.
- You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conference, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your complaint. You have had more than 30 days in which to respond to our written request.
- The Commission's efforts to locate you have been unsuccessful. You have had at least 30 days in which to respond to a notice sent to your last known address.
- The Respondent has made a reasonable settlement, offering full relief for the harm you alleged. 30 days have expired since you received actual notice of this settlement offer.
- The Commission issues the following determination. Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes a violation of the statutes. This does not certify that the Respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this complaint.

-NOTICE of APPEAL-

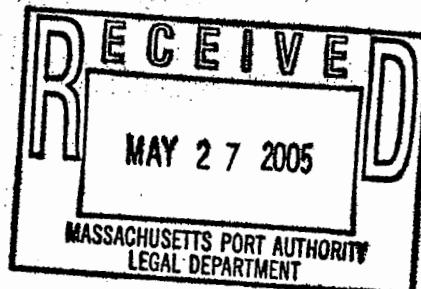
If you wish to appeal the dismissal of your complaint and believe that the above stated reason for dismissal is incorrect, you may appeal to this Commission within 10 days after receipt of this notice. You or your attorney must make your appeal of the dismissal in writing to the appeals clerk of this Commission. Attention: Ms. Nancy To.

All employment complaints, where applicable, were filed by the MCAD with the Equal Employment Opportunity Commission. Our finding, which will be forwarded to its area office, JFK Federal Building, Boston, MA will be given substantial weight provided that such findings are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the ADEA, and/or the ADA, as amended.


Walter J. Sullivan, Jr., Esq.
Investigating Commissioner

5/27/05
DATE

Cc: William V. Hoch, Esq.
Sr. Employment Counsel
Mass Port Authority
One Haborside Dr, Suite 200S
Boston, MA 02128



TO: File
FR: Katherine M. Martin, Esq., Supervisor
CASE: Pione v. Mass Port Authority
MCAD NO: 021302528
EEOC NO: 16CA202773
EMPLOYEES: 25+

RECOMMENDATION FOR DISMISSAL OF THE COMPLAINT

ISSUES INVESTIGATED:

On July 26, 2002 the Complainant filed a complaint with this Commission alleging that he had been discriminated against because of his age, 58 (DOB 7/16/43) in that he was terminated in violation of Massachusetts General Laws, Chapter 151B, Section 4, Paragraph 1B and the ADEA of 1990 as amended.

SUMMARY OF FINDINGS:

The Complainant cannot establish a prima facie complaint for discrimination based on age. The Complainant is a member of a protected class. The Complainant was hired as a permanent part time employee at age 54 in 1997 and was terminated at age 58.

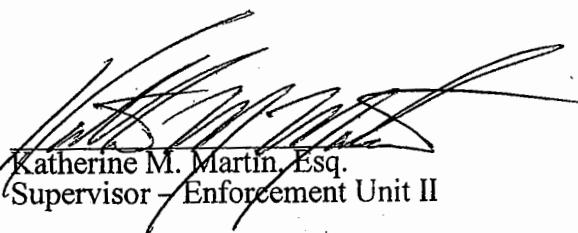
On October 16, 2001, the Complainant was seen entering the locked office of Anita Jansky, Payroll Supervisor. The Complainant did not have authorization to enter this office outside the normal course of business¹. On the date I question, the Complainant was seen by Phyllis Daigle, Internal Audit Manager, and entering Ms. Jansky's office several hours before Jansky commenced work. There is no dispute that the office was locked, that the Complainant had a key, that Complainant was not to the best of Jansky's knowledge authorized to have a key or authorized to be in her office without her knowledge or consent.

The Respondent conducted an internal investigation. The Complainant, on the advice of counsel, declined to answer any questions as to why he had the key, why he was in Jansky's office or any allegations of disparate treatment.

The Complainant has not presented any evidence that any other person who engaged in similar behavior was not terminated. While he makes vague references in his subsequent submissions of cliques and age bias, he does not show any relation between these unsubstantiated allegations and the reason for his termination, unauthorized access to a secure office.

CONCLUSION:

For the foregoing reasons, a lack of probable cause finding is recommended.



Katherine M. Martin, Esq.
Supervisor - Enforcement Unit II

¹ The Complainant did share a printer with Ms. Jansky. He was permitted, *when the office was already opened*, to enter the office to retrieve printed documents. There is NO information presented to show that Complainant had authorization to access the office in Ms. Janksy's absence.